

## HR Law Hotline

March 13, 2007

### SC PREVENTS DENIAL OF JOB OFFER, INVOKING PRINCIPLES OF CONTRACT LAW

In a recent ruling, a Division Bench of the Supreme Court of India ("SC") invoked the principles of contract law to block a public sector undertaking, the Food Corporation of India ("FCI"), from denying a job offer under a "compassionate appointment scheme" ("Scheme") to the dependent of a retired employee.

Under the Scheme, the benefit of "compassionate appointment" extended to dependants of employees who sought voluntary retirement on medical grounds, subject to stipulated conditions. One such condition was that the worker should seek such retirement before the age of 55 years. The Scheme also stated that such appointment "is not as a matter of right but purely at the discretion of the competent authority".

The employee had made a composite application for voluntary retirement on medical grounds, on condition that his son be employed in his place, as provided in the Scheme. On the date of the application, the employee's age was over 55 years. FCI nevertheless accepted the application, and issued an office order retiring the employee from service.

However, the proposal for the appointment of the retired employee's son was rejected on the ground that the retiring employee had crossed the stipulated age limit at the time of making his application.

The retired employee and his son petitioned the High Court to quash the rejection order. The court upheld the contention of FCI that the son was not entitled to the appointment as the employee had crossed the stipulated age limit when he made the application. The matter went in appeal before a Division Bench of the High Court. Following precedent, the Division Bench held that once FCI accepted the application of its employee for retirement under the Scheme, and retired the employee, it was obliged to appoint the dependent of such employee, and could not turn down the employee's request on any technical ground.

FCI went in appeal to the SC against the ruling of the Division Bench of the High Court. The SC held that having unconditionally accepted the conditional offer, FCI was bound by its terms. The apex court observed that when an offer is conditional, the offeree has the choice of either accepting the conditional offer, or rejecting it, or making a counter offer. But what the offeree cannot do, when an offer is conditional, is to accept a part of the offer, which results in performance by the offeror, and then reject the balance contract on the ground that the condition subject to which the offer is made is not met. Having denied the employee the opportunity to withdraw the offer, and having retired him by accepting the conditional offer, FCI could not thereafter refuse to comply with the condition subject to which the offer was made.

The ruling by the SC is significant as it establishes that in addition to reliance on specific provisions in prevailing employment and labour laws to resolve employer-employee disputes, the principles of other general laws ~ in this case the law of contract ~ assume relevance to ensure an equitable outcome to such disputes.

Source: *Food Corporation of India & Anr vs Ram Kesh Yadav & Anr, SC 2007 230, Civil Appeal No. 3451 of 2006*

- Rina Kamath & Vikram Shroff

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