Chapter 6

Social and Economic implications of Voluntary Retirement Scheme

6.1. Introduction 142-144

6.2. Views of Union on VRS 145-149

6.3 Management Defenses 149-154

6.4. Selected Judicial Observations 155-157
Chapter 6

Social and Economic implications of Voluntary Retirement Scheme

6.1. Voluntary Retirement Scheme will be better option for those who are young and energetic and smart and qualified. So that he/she can go for a new job or for starting a business of their choice. For those employees whose age is more than 50 years, not keeping good health and so qualified for such workers, it will be very difficult to get any kind of job for their livelihood. The money, which they got through VRS, may not be sufficient to run their families for the remaining part of life. Example an employee gets married at the age of 30 years and he takes the VRS at the year of 45 or 50, his son or daughter may studying in the school or college. It will be very difficult to meet the child’s basic education and has to forget for higher studies as the study requires huge donation and fees and also it impossible to run the family with the small amount of VRS package whatever he gets from the company.

If the employees have a girl child for her education and marriage lot money is required. In such cases what could be the remedy. He
can neither spend his VRS money on child marriage nor he can live remaining part of his life peacefully.

For example if the VR employee is a lady she can spend her post retirement life comfortably with husband and children. The employees who had not planned their career and spends their money lavishly could not have any respectable life in the society. Such employees cannot protect their children and family members if they spend their VR money in ladies bars and other gambling activities. Some of the workers had got huge money suddenly through VRS does not know how to spend such unexpected money. Many of them spent part of the money on house decoration or repayment of existing loans finally end up with either with a little balance or no balance in their account. Survival of such employees will be very difficult.

Many of the employees either have invested their money in post office and other savings in financial institutions which gives very low interest. This small interest earned also attracts income tax, hence the employees find it very difficult for choosing alternative investments. Few of them invest in the share market. Through right now the market is upward, but future is very uncertain.
The affect on people who remain with the company. All the remaining employees become extremely suspicious about management intend top management, in their eyes loses credibility. They may feel that the company what ever done to VR employees may do with them also in future. Hence they will have sense of insecurity. This will effect the organization. Good employees may leave the organization if they get better offer elsewhere.

Prolonged thinking, fear, may create health problem, psychological stress, and absenteeism resulting to low productivity. Hence giving counselling to the existing employees is very important. There should be constant dialogue with employees regarding future plan of the company. The management must create trust on existing employees. Turnaround a company does not necessarily means turning out people. This is often a symptomatic treatment that lets the disease continue undisturbed causing every one in a while. What are really calls for it turning over a few leaves in the way the company is to be managed.
6.2. VIEWS OF UNIONS ON VRS:

There have been a number of cases, where the Unions have challenged the introduction of VRS. Generally, Unions make not only the company as one of the respondents in the complaints of alleged unfair labour practices, but they also implied the managing director and other senior officers as respondents to the complaint. The objections of the Union against the VRS before the Courts have been as under:

1. The company has failed to take into confidence the Union before unilaterally announcing the VRS. This violates the agreements and understanding reached between the management and Union in the past. The companies by signing various settlements with the Union have awarded the status of a de-facto recognized Union to the Union and all these years there has been a long standing practice of discussing the issues of collective nature with the Union before implementing them. However this time, the company with mollified intention, has denied the collective bargaining rights to the union by unilaterally declaring the VRS and are pressurising the workman to leave the employment of the company, thereby forcing the workmen to leave their employment under the guise of VRS.
2. The employer has committed unfair labour practices under items 1, 2, 7, and 10 of Schedule IV of the Maharashtra Recognition of Trade Union and prevention of Unfair Labour Practices Act, 1971. The relevant portions of these items are:

Item 1:
To discharge or dismiss employees –
   a. by way of victimization
   b. not in good faith, but in colorable exercise of the employees’ rights
   c. for presently false reasons

Item 2:
To abolish the work of a regular nature being done by employees and to give such work to contractor as a measure of breaking a strike.

Item 7:
To discharge or discriminate against any employee for filing charges or testifying against an employer in any inquiry or proceeding relating to any industrial dispute.

Item 9:
Failure to implement award, settlement or agreement.
Item 10:

To indulge in act of force or violence.

3. The financial position of the company is extremely sound and prosperous. The company’s business has grown up by high percentage. Its turnover, performance and profits have gone up. Its future is bright.

4. Union and workmen have co-operated with the management in raising productivity and profits.

5. Instead of sharing gains of productivity and its profits and prosperity with employees, the company has started getting its products manufactured through third party agencies; thereby depriving the employees their livelihood contrary to the provisions of various settlements, awards, standing orders and laws.

6. The company’s action of announcing VRS will deprive workmen of their livelihood and will help company in shifting its manufacturing activities of more and more products to third party agencies and low cost areas.

7. To create fear in the minds of workmen the company is keeping them deliberately idle and without work. It is also calling individual workman and creating fear psychosis in their minds.
8. The company's action in getting its products manufactured by outside agencies will not only affect the livelihood of the present work force but also the products manufactured outside will endanger the life of the people consuming the same as the third party manufactures would not and could not be in a position to maintain the good manufacturing practice/standards relevant laws and regulations. The third party manufacturing lacks in quality and / or will fail to maintain good manufacturing practice /standards required for manufacturing products under the provisions of the relevant laws and regulations. The third party manufacturing lacks in quality and / or will fail to maintain good manufacturing standards. This would tarnish the image of the company in the eyes of the public and the concerned authorities.

9. The company has modified intention of punishing and discriminating against employees. because the employees have filed proceedings against the company through the Union and have testified against the company in such proceedings.

10. The Union therefore, seeks the following relief's from the Court:

   a) That the Court be pleased to declare that company and its officers have jointly and/or severally committed all or any of the unfair labour practices under item 1, 2, 7, 9 and 10 of the Maharashtra Act.
b) That the Court be pleased to direct the company, its directions, managers, servants and agents to cease and desist from engaging in the aforesaid unfair labour practices by not getting any of their products manufactured through third party outside agencies and to bring back the manufacturing activities of the products.

c) That the Court be pleased to direct the company and its directors, managers, servants and agents from declaring and implementing the VRS resulting in civil consequences.

d) That the court be pleased to direct the company and its directors, to discuss, negotiate and settle the VRS with the union before announcing it.

6.3. MANAGEMENT DEFENCES:

Some of the defenses put forward by the management while contesting the complaints filed by the unions against the VRS may be as under:

1. That the Union has been invited for discussion on VRS, but it did not co-operate, thereby it deprived itself of an opportunity and the alleged right of negotiations about VRS:

2. That the selling prices of the company's products have been strict Government control for a number of years and there is little likelihood that this situation will change:
3. That the company has been incurring significant losses from domestic business:

4. That since the national and international standards have become more stringent, the company’s plant layout and infra-structure has become outdated and requires immediate upgrading.

5. That the recent current revenues from the company’s business cannot fund investment necessary to even keep pace with the company’s requirement.

6. That the company has introduced manufacturing some of its products through third party agencies, to improve its profitability and remain in business: that greater and stringent demands of technical and increase in the pace of safety standards, the company has been compelled to discontinue certain products and replace them with environmentally friendly products:

7. That due to infra-structure constraints and zoning policy of the state and local authorities, the company has to shift production of certain products to another site outside the present state:

8. The aforesaid causes have resulted in rendering an increasing number of workmen in the present plant idle and who cannot be gainfully employed or deployed for any other purpose:
9. It is on account of these factors, that the company had to formulate its VRS:

That the VRS is sufficiently attractive enough to invite its acceptance by those employees for whom there is no longer any work. This will make the company's continuation viable:

10. That the company has not indulged in any unfair labour practices by introducing VRS.

11. That the Court is not competent to decide the vague complaint of the Union.

12. That the Union's allegations are vague, general and false. The Union has misrepresented and suppressed material and relevant facts with an ulterior motive to misled this Court and snatch relief's to which neither the Union nor any of its members entitled under law:

13. That mere flippant and cavalier allegations and unwarranted in situations against the management do not authorize the complaint of the type it has filed. The challenge, if any, to VRS has to be made by the affected individual employees and not by unrecognized well-wishes.

14. The company has not engaged in any unfair labour practices as alleged by the Union.
15. Due to non-availability of the domestic business, it has not been possible for the company to find investment necessary for upgrading of its plant and infrastructure. This, coupled with dis-continuation of certain products and restrictions on manufacturing of certain products arising out of the zoning policy of the state government and the local authority, has rendered an increasing number of employees idle and who cannot be gainfully employed or deployed:

16. That the present plant is technically out-dated due to its non-upgradation for lack of investable capital because of accumulated losses in business. This making it increasingly difficult to produce goods of assured quality. Solely on account of these difficulties, the company has offered VRS to those of the workmen who are aged more than 40 years with minimum of 10 years permanent service in the company and are willing to voluntarily separate from the company:

17. That the vague allegation of the Union that the VRS is illegal and unjustified is denied:

18. That the vague allegation of the Union that the company's action of offering VRS to its employees is with a view to deprive the workmen of their livelihood:
19. That the vague allegation of the Union the company has started shifting the manufacturing activities of more and more products to third party agencies is denied:

20. That it has been the long standing practice in the industry to get products manufactured by third parties as a matter of commercial and business expediency, within the frame work of government policies:

21. That assuming for the sake of argument only and without admitting that the company has shifted the manufacturing activities of more and more products to third party agencies, the company’s such action does not amount to any illegality or irregularity or unfair labour practices and does not give jurisdiction to the Court to intervene in the matter:

22. That the offer of VRS to its employees has nothing to do with the company’s long standing practice of getting certain products manufactured by third parties or doing business through trading route:

23. That the vague allegation of the Union that the VRS is being offered with a view to transferring illegally [as alleged] or by back door methods, manufacturing of any or many products by third party agencies or with a view to affecting the livelihood of the present force is denied:
24. That the vague allegation by the Union that the manufacturing of certain products by third parties will endanger the life of the people consuming the said products is denied:

25. That the vague allegation made by the Union that the third party manufacturing will not and cannot be in a position to maintain the good manufacturing practices / standards required for manufacturing products under provisions of the relevant laws and regulations is denied:

26. That the vague allegation made by the Union that the third party manufacturing lacks in quality and / or will fail to maintain the reputation of the company in the eyes of the public and the concerned authorities is denied:

27. That the VRS does amount to removal or termination of services from the employment. Introduction of VRS does not attract provision of Section 9 A of the Industrial Dispute Act, 1947:

28. That the relief sought for by the Union are contrary to the provisions of law and rights of the workmen themselves. The Union is not entitled under the law to restrain its members and / or other employees from exercising their fundamental freedom of action such as right not to
work for the company and voluntarily retire from the services of the company:

29. That the grant of prayers made by the Union will cause irreparable loss to the company and the concerned workmen:

6.3. SELECTED JUDICIAL OBSERVATIONS:

VR Scheme has been subject of challenge before Courts. The Courts, observations on VRS may be summed up as under:

1. Even unrecognized Unions have power to raise industrial disputes touching the employment of conditions of employment of its members. The definition of Industrial Disputes in the Industrial Dispute Act, 1947 (IDA) covers even the difference between employer and workmen which is connected with the employment or non-employment or terms of employment or with the conditions of labour of any person. The definition of Industrial Dispute under the IDA is wide enough to embrace dispute or difference relating to Introduction or implementation of VRS and its possible consequences.

2. Right of voluntary retirement is a right in person am and not a right in rem. Therefore, the challenge, if any, to the VRS, has to be made by the individual workmen.

3. The underlying spirit under the VRS is take it or leave it.
4. The VRS does not spell out any coercion or compulsion.

5. The definition of RETERNCHMENT under IDA excludes VR in other words, VRS does not partake the character of retrenchment under the IDA and such, it is not necessary for the company to comply with the provision of Section 25N of the IDA.

6. VRS is not a termination of services by the employer but it is termination of employment by the own act of the employee. When a person voluntarily relinquishes his employment, he must be deemed to be aware of the consequences that may follow from his action.

7. Implementation of VRS does not result in change in the services conditions of the workmen, since the reduction in the number of persons employed would be on account of act of the workmen.

8. There is no provision of law that prohibits employer in introducing or implementing VRS. On the contrary, the VRS has the sanction of the State as well as law, since under the income Tax act, 1961, amounts of compensation received under approved VRS has legal sanctity and as such it becomes enforceable at law.

9. VRS can be drawn even by a profit making company.

10. The company's viability or non-viability will not be relevant actor
while examining the legality of VRS.

11. VRS is not opposed to public policy.

12. VRS is a better method than lay-off and retirement.

13. In VRS, free will of the employee prevails.

14. Employer cannot give effect to VRS unless the employee responds.

15. In VRS, there is nothing un-ethical on the part of the employer.

16. VRS require no consent from the Union.

17. If the Union is opposed to VRS, it may well advise the members not to opt for it.

18. It is the exclusive prerogative of the management to reorganize its business in the desired manner. It considers the best. However, it must be a bonafide act, then the Industrial Court is not at all competent to question its property.