



UCOBANK RETIREES' ASSOCIATION KARNATAKA (Regd)

(Regd as S.No: 699/97-98 Dated 20/01/1998 with the Registrar of Societies, Karnataka)

Regd Office: C/o UCOBank, 3rd Floor, 13/22, Kempegowda Road, Bangalore-560009

Website: urakar.com



UBRA-KAR/CIR/0062/2017-20

Date: 15.03.2019

Dear members,

SUB: Pension Case of Resigned Employees Lost in Supreme Court.

The judgement in respect of Civil Appeal No.14739 of 2015 filed in The Supreme Court of India has been pronounced on 15.03.2019. The judgement has gone against those who have resigned.

A copy of the judgement is appended below for reference of all.

B.Lakshminarayana

Hon.Secretary.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.14739 of 2015

SENIOR DIVISIONAL MANAGER, LIFE INSURANCE CORPORATION OF INDIA & ORS.

....Appellants

Versus

SHREE LAL MEENA

....Respondent

With:

C.A. Nos.3138-3141_of 2019 [arising from SLP(C) Nos.5716-5719 of 2016] C.A. No.10904 of 2016

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. Employees resigned from service. We are concerned with one employee of the Life Insurance Corporation of India; one employee of the United India Insurance Company Limited and a batch of employees 1 of Andhra Bank. These employees resigned when the pension schemes in respect of these institutions in question were not in force. The pension schemes came into force subsequently, but with retrospective effect. The question, which, thus, arose was whether these employees, who had

resigned from service post the date from which the pension schemes were made applicable, but prior to the date on which the schemes got notified, would be entitled to the benefit of the pension schemes in question. A Bench of two Judges of this Court found that there was a divergence of judicial views of this Court, and the matter needed to be examined by a larger Bench. The reference order was passed in CA No.14739/2015 and that is how the matter is before us.

2. We deem it appropriate to set forth the factual matrix, relevant for the determination of the controversy, in respect of the lead matter and thereafter, we will analyse the legal principles and accordingly decide the connected matters. C.A. No.14739 of 2015

3. Shree Lal Meena, the respondent in the appeal was an employee of the Life Insurance Corporation of India Limited (for short 'LIC'). On completion of more than 20 years of service, he addressed a letter dated 2 15.6.1990 to the LIC, expressing concerns about the poor health of his wife and himself and the possibility that he may be seeking voluntary retirement on account thereof. There being no response to this letter, Shree Lal Meena followed the said letter with another letter dated 18.6.1990, reiterating the same aspect. Once again, there was no response. Finally, he tendered a letter of resignation on 14.7.1990, for it to take effect immediately, by waiving off the mandatory notice period of three months under Regulation 18 of the Life Insurance Corporation of India (Staff) Regulations, 1960 (hereinafter referred to as the 'Staff Regulations'). The acceptance of the resignation was communicated by the LIC vide letter dated 11.1.1991, to take effect from 14.7.1990, waiving off the statutory notice period.

4. It is pertinent to note that there was no scheme or provision for voluntary retirement applicable to Shree Lal Meena during this period of time. Shree Lal Meena was paid all his dues as were admissible to him. The beneficial scheme operating at the relevant time was a Contributory Provident Fund Scheme under Regulation 76 of the Staff Regulations.

5. More than 5 years later, the Life Insurance Corporation of India (Employees) Pension Rules, 1995 (for short 'Pension Rules') were promulgated, on 28.6.1995, but were brought into force with retrospective effect, from 1.11.1993, unless expressly provided against. The applicability of Section 3(1)(a) of the Pension Rules made the scheme applicable to all the employees who were in service of the LIC on or after 1.1.1986, but had retired before 1.11.1993, given that the employees satisfied the other conditions provided for in the Pension Rules.

6. Shree Lal Meena was in service after 1.1.1986. He had, however, resigned with effect from 14.7.1990. Had he not resigned he would have continued in service and would have retired sometime around the year 2000. He had also made an endeavour, prior to his resignation, proposing voluntary retirement for himself. Shree Lal Meena was, thus, of the view that the Pension Rules should be made applicable to him and accordingly made a request, which was, however, declined on 6.4.1996 by the LIC on the ground that he had 'resigned' from service. He, thus, issued a notice of demand vide letter dated 28.8.1997, which met with the same fate and finally filed a writ petition before the Rajasthan High Court in 1997 itself, which was decided in his favour, by the learned Single Judge of that Court, vide judgment dated 8.9.2006.

7. The gravamen of the judgment of the learned Single Judge is the request made by Shree Lal Meena for voluntary retirement and that it was the absence of any provision for the same under the Staff Regulations, which had caused him to tender his resignation. This view was sought to be supported by the judgment of this Court in JK Cotton Spinning & Weaving Mills Co. Ltd., Kanpur v. State of U.P.,¹ opining that where an employee voluntarily tenders his resignation, termination of service, post acceptance of such resignation by the employer would fall in the category of 'voluntary retirement', given all other ingredients of voluntary retirement were being met. It may be noted that in the factual contours of the controversy of that judgment, the question really posed was whether in the case of services of an employee being terminated consequent to a voluntary resignation, such termination so brought about would amount to retrenchment within the meaning of Section 2(s) read with Section 6N of the Uttar Pradesh Industrial Disputes Act, 1947. As per the provisions of Section 2(s) of that Act, the definition of 'retrenchment' excludes a case of voluntary retirement. Since the employee had tendered his resignation voluntarily, and had subsequently claimed compensation on account of retrenchment, this 1 AIR 1990 SC 1808 5 Court, in that case had opined against the employee. The learned Single Judge of the Rajasthan High Court also recorded that there was no dispute that Shree Lal Meena had the requisite years of service to be entitled to pensionary benefits if the scheme had existed at the relevant point of time.

8. LIC, aggrieved by this order, appealed to the Division Bench of the High Court, which endeavour, however, failed as the appeal was dismissed vide order dated 16.8.2011. The plea of the LIC, based on the judgment of this Court in Reserve Bank of India & Anr. v. Cecil Dennis Solomon & Anr.2 and of the Division Bench of the Punjab & Haryana High Court in J.M. Singh v. Life Insurance Corporation of India & Ors.3 was repelled.

9. The present appeal has thereafter been filed by the LIC, in which the reference order was passed.

10. In order to appreciate the reasoning of the Courts below, supported by the respondent in the appeal and the arguments advanced on behalf of the appellant also on the same lines, but repelled by the Courts below, we consider it necessary to first appreciate the Pension Rules, which have 2 (2004) 9 SCC 461 3 CWP No.10157/1996 decided on 8.1.2010 6 been brought into force.

11. Rule 2 is the definition rule, defining the various expressions used in the Pension Rules. The relevant Rule 2(j) reads as under: “2. Definitions – In these rules, unless the context otherwise requires – xxxx xxxx xxxx xxxx (j) “employee” means any person employed in the service of the Corporation on full-time work on permanent basis and who opts and is governed by these rules but does not include an employee retired before the commencement of these rules and who is drawing pension from the Pension Fund of the Oriental Government Security Life Assurance Company Limited in accordance with sub-regulation (2) of regulation 76 of the Life Insurance Corporation of India (Staff) Regulations, 1960, made under the Act;”

12. A reading of the aforesaid clause shows that there is a specific exclusion of an employee in whose case the twin conditions of having ‘retired’ before the commencement of the Pension Rules and drawing of pension under the Staff Regulations is satisfied. Rule 2(s) reads as under: “2. Definitions – In these rules, unless the context otherwise requires – xxxx xxxx xxxx xxxx (s) “retirement” means,- (i) retirement in accordance with the provisions contained in subregulation (1) or sub-regulation (2) or sub-regulation (3) of regulation 19 of the Life Insurance Corporation of India (Staff) Regulations, 1960 and rule 14 of the Life Insurance Corporation of India Class III and Class IV Employees (Revision of Terms and Conditions of 7 Service) Rules, 1985 made under the Act; (ii) voluntary retirement in accordance with the provisions contained in rule 31 of these rules;”

13. Thus, the definition of ‘retirement’ envisages two eventualities – first a person who had retired in terms of the Staff Regulations; and secondly, a voluntary retirement under the provisions of the Pension Rules themselves.

14. Another relevant provision to be taken note of is Rule 23 of the Pension Rules, which reads as under: “23. Forfeiture of service - Resignation or dismissal or removal or termination or compulsory retirement of an employee from the service of the Corporation shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.”

15. The aforesaid Rules, thus, show that resignation entails forfeiture of the entire past service and consequently would not qualify for pensionary benefits. Rule 31 deals with ‘Pension on voluntary retirement’, which is admissible on completion of 20 years of qualifying service, with a notice of not less than 90 days in writing.

16. The moot point which, thus, arises for consideration is the effect of the retrospective application of these Rules in the given factual scenario. 8 Had the Pension Rules been only prospective in application, there is no doubt that Shree Lal Meena could not even have endeavoured to prefer a claim. In order to appreciate this aspect, the extent to which retrospectivity applies would have to be analysed, strictly on the basis of these Pension Rules, which are also contributory in their character.

17. The undisputed fact is that as on the date when Shree Lal Meena was revolving the thought in his mind of voluntary retirement, there was no such provision in the Staff Regulations applicable. Thus, his repeated communications setting forth a thought process for ‘voluntary retirement’ had no legal backing on that date. It is in these circumstances that no response was forthcoming to his letters, when he talked about a concept which did not exist. Conscious of this aspect and wanting to leave the services of the LIC, Shree Lal Meena took recourse to what was permissible on that date, i.e., ‘resignation’. Section 3 of the Staff Regulations has a heading ‘Termination’. The other expression used before the relevant Regulation 18 is ‘Determination of Service’. The Regulation itself uses the expression ‘leave or discontinue’ service. In whatever manner these expressions are understood, in legal and common parlance, they amount to, first a unilateral act on the part of an employee, 9 desirous of not continuing with her/his service with the employer and then, the acceptance of the same by the employer, subject to a notice period, which, in the present facts, had been waived at the request

of the employee. Thus, on the relevant date he took a conscious decision to disengage himself from the services of the appellant, on the terms & conditions as prevalent on that date. As to what happened five years hence, in our view, would have no bearing on any benefit, which can accrue to such employee as a respondent, except to the extent which is specifically made applicable to him.

18. It is trite to say that statutory provisions must be given their clear meaning unless there is ambiguity in the wordings.⁴ There is no ambiguity in the Pension Rules in question as to require any import to be given that is different from its plain words. The Pension Rules have been brought into force from a retrospective date of 1.11.1993. Thus, they would logically apply to all employees in service on or after 1.11.1993. The respondent was not such a person. There is only one further twist to the Pension Rules. Rule 3(1)(a) of the Pension Rules refers to 4 *Grundy v. Pinniger* (1852) 21 LJ Ch 405; *Pinner v. Everett* [1969] 3 All ER 257: "In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute. It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature that it is proper to look for some other possible meaning of the word or phrase".¹⁰ applicability of these Pension Rules even to such of the employees who "retired" on or after 1.1.1986 and before 1.11.1993. Even for such of the employees, there is a requirement for an option to be exercised, in writing, that within a period of time of 120 days from the notified date they become member of the Life Insurance Corporation of India (Employees) Pension Fund, and refund within 60 days thereafter, the entire amount of LIC's contribution to the Provident Fund, including interest accrued thereon. This is so, as employees who retired during this period of time had availed of the contributory provident fund benefit under the then existing Staff Regulations, and would have to surrender the benefits under those Regulations to the extent they were contributed for by the LIC, for the new Pension Rules to be made applicable to them. The expression used in Rule 3(1)(a) is clear and unequivocal – 'retired'. It has not used any alternative expression also, for determination of the relationship of employer-employee, like 'resignation'. In the same Rules, expressions like 'resignation', 'dismissal', 'removal' have been used, more specifically in Rule 23 of the Pension Rules. When different expressions are used in the same Rules, in different contexts then all of them cannot be given the same meaning.⁵ 5 *Member, Board of Revenue v. Arthur Paul Benthall* (1955) 2 SCR 842; *Kanhaiyalal Vishindas Gidwani* 11

19. What is most material is that the employee in this case had resigned. When the Pension Rules are applicable, and an employee resigns, the consequences are forfeiture of service, under Rule 23 of the Pension Rules. In our view, attempting to apply the Pension Rules to the respondent would be a self-defeating argument. As, suppose, the Pension Rules were applicable and the employee like the respondent was in service and sought to resign, the entire past service would be forfeited, and consequently, he would not qualify for pensionary benefits. To hold otherwise would imply that an employee resigning during the currency of the Rules would be deprived of pensionary benefits, while an employee who resigns when these Rules were not even in existence, would be given the benefit of these Rules.

20. Now turning to the discussion of the judicial pronouncements in this behalf, we are of the view that any judgment has to be read for the law it lays down, by reference given to a factual matrix. Lines or sentences here and there should not be read in absolute terms, de hors the factual matrix in the context of which those observations were made.⁶ 6 *v. Arun Dattatray Mehta* (2001) 1 SCC 78: "It is true that when the same statute uses two different words then prima facie one has to construe that these two different words must have been used to mean differently." 6 *CIT v. Sun Engineering Works (P.) Ltd.* (1992) 4 SCC 363. 12

21. The judgment in *JK Cotton Spinning & Weaving Mills Co. Ltd., Kanpur*⁷ has, thus, to be considered in that context. What was the issue in that case? The first paragraph of the judgment itself clarifies that aspect. Whether determination of an employer-employee relationship amounted to retrenchment, within the meaning of the provisions of the Act applicable is what was being looked into. We have already noticed, while referring to the facts of that case hereinbefore, that the employee in question tried to act clever by half. He firstly resigned. The resignation was accepted and the consequent monetary benefit flowed to him. Thereafter, he sought to bring his resignation within the meaning of 'retrenchment' under Section 2(s) read with Section 6N of the Uttar Pradesh Industrial Disputes Act, 1947. The definition of 'retrenchment' itself clearly excluded voluntary retirement of

the workman. The employee, having voluntarily resigned, the termination of relationship of employer and employee could not come within the meaning of 'retrenchment'. This Court analysed the difference between the meaning of resignation and retrenchment. The resignation was voluntary. It is in this context that it was observed that a voluntary tendering of resignation would be similar to voluntary retirement and not retrenchment. Nothing 7 (supra) 13 more and nothing less. Thus, in our view, the High Court, both the learned Single Judge and the Division Bench, appeared to have read much more into this judgment than the legal proposition which it sought to propound. The principles in the context of the controversy before us are well enunciated in the judgment of this Court in Reserve Bank of India & Anr. v. Cecil Dennis Solomon & Anr.⁸ On a similar factual matrix, the employees had resigned some time in 1988. The RBI Pension Regulations came in operation in 1990. The employees who had resigned earlier sought applicability of these Pension Regulations to themselves. The provisions, once again, had a similar clause of forfeiture of service, on resignation or dismissal or termination. The relevant observations are as under: "10. In service jurisprudence, the expressions "superannuation", "voluntary retirement", "compulsory retirement" and "resignation" convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the 8 (supra) 14 general rule can be displaced by express provisions to the contrary. In Punjab National Bank v. P.K. Mittal [AIR 1989 SC 1083] on interpretation of Regulation 20(2) of the Punjab National Bank Regulations, it was held that resignation would automatically take effect from the date specified in the notice as there was no provision for any acceptance or rejection of the resignation by the employer. In Union of India v. Gopal Chandra Misra [(1978) 2 SCC 301] it was held in the case of a judge of the High Court having regard to Article 217 of the Constitution that he has a unilateral right or privilege to resign his office and his resignation becomes effective from the date which he, of his own volition, chooses. But where there is a provision empowering the employer not to accept the resignation, on certain circumstances e.g. pendency of disciplinary proceedings, the employer can exercise the power. 11. On the contrary, as noted by this Court in Dinesh Chandra Sangma v. State of Assam [(1977) 4 SCC 441] while the Government reserves its right to compulsorily retire a government servant, even against his wish, there is a corresponding right of the government servant to voluntarily retire from service. Voluntary retirement is a condition of service created by statutory provision whereas resignation is an implied term of any employer-employee relationship."

22. In our view, the aforesaid principles squarely apply in the facts of the present case and the relevant legal principles is that voluntary retirement is a concept read into a condition of service, which has to be created by a statutory provision, while resignation is the unilateral determination of an employer-employee relationship, whereby an employee cannot be a bonded labour. 15

23. In UCO Bank & Ors. v. Sanwar Mal⁹, once again, in the case of a similar pension scheme, the observations were made as under: "6. To sum up, the Pension Scheme embodied in the regulation is a self-supporting scheme. It is a code by itself. The Bank is a contributor to the pension fund. The Bank ensures availability of funds with the trustees to make due payments to the beneficiaries under the Regulations. The beneficiaries are employees covered by Regulation 3. It is in this light that one has to construe Regulation 22 quoted above. Regulation 22 deals with forfeiture of service. Regulation 22(1) states that resignation, dismissal, removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. In other words, the Pension Scheme disqualifies such dismissed employees and employees who have resigned from membership of the fund. The reason is not far to seek. In a self-financing scheme, a separate fund is earmarked as the Scheme is not based on budgetary support. It is essentially based on adequate contributions from the members of the fund. It is for this reason that under Regulation 11, every bank is required to cause an investigation to be made by an actuary into the financial condition of the fund from time to time and depending on the deficits, the Bank is required to make annual contributions to the fund. Regulation 12 deals with investment of the fund

whereas Regulation 13 deals with payment out of the fund. In the case of retirement, voluntary or on superannuation, there is a nexus between retirement and retiral benefits under the Provident Fund Rules. Retirement is allowed only on completion of qualifying service which is not there in the case of resignation. When such a retiree opts for self-financing Pension Scheme, he brings in accumulated contribution earned by him after completing qualifying number of years of service under the Provident Fund Rules whereas a person who resigns may not have adequate credit balance to his provident fund account (i.e. bank's contribution) and, therefore, Regulation 3 does not cover employees who have resigned. Similarly, in the case of a dismissed employee, there may be forfeiture of his retiral benefits and consequently the framers of the Scheme have kept out the retirees (sic resigned) as well as dismissed employees vide Regulation 22. Further, the pension payable to the beneficiaries under the Scheme would depend on income accruing on 9 (2004) 4 SCC 412 16 investments and unless there is adequate corpus, the Scheme may not be workable and, therefore, Regulation 22 prescribes a disqualification to dismissed employees and employees who have resigned. Lastly, as stated above, the Scheme contemplated pension as the second retiral benefit in lieu of employers' contribution to contributory provident fund. Therefore, the said Scheme was not a continuation of the earlier scheme of provident fund. As a new scheme, it was entitled to keep out dismissed employees and employees who have resigned. 7. In the light of our above analysis of the scheme, we now proceed to deal with the arguments advanced by both the sides. It was inter alia urged on behalf of the appellant bank that under Regulation 22, category of employees who have resigned from the service and who have been dismissed or removed from the service are not entitled to pension, that the pension scheme constituted a separate fund to be regulated on self-financing principles, that prior to the introduction of the pension scheme, there was in existence a provident fund scheme and the present scheme conferred a second retiral benefit to certain classes of employees who were entitled to become the members/beneficiaries of the fund, that the membership of the fund was not dependent on the qualifying service under the pension scheme, that looking to the financial implications, the scheme framed mainly covered retirees because retirement presupposed larger number of years of service, that in the case of resignation, an employee can resign on the next day of his appointment whereas in the case of retirement, the employee is required to put in a certain number of years of service and consequently, the scheme was a separate code by itself, that the High Court has committed manifest error in decreeing the suit of the respondent inasmuch as it has not considered the relevant factors contemplated by the said scheme and that the pension scheme was introduced in terms of the settlement dated 29.10.1993 between the IBA and All-India Bank Employees' Association, which settlement also categorically rules out employees who have resigned or who have been dismissed/removed from the service." xxxx xxxx xxxx xxxx xxxx "9. We find merit in these appeals. The words "resignation" and "retirement" carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining 17 the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is severance of employment (sic is the same) but in service jurisprudence both the expressions are understood differently. Under the Regulations, the expressions "resignation" and "retirement" have been employed for different purpose and carry different meanings. The Pension Scheme herein is based on actuarial calculation; it is a self-financing scheme, which does not depend upon budgetary support and consequently it constitutes a complete code by itself. The Scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. Moreover, resignation brings about complete cessation of master-and-servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service. Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulations/rules framed by the Bank. Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits. Further, there are different yardsticks and criteria for submitting resignation vis-à-vis voluntary retirement and acceptance thereof. Since the Pension Regulations disqualify an employee, who has resigned, from claiming pension, the respondent cannot claim membership of the fund. In our view, Regulation 22 provides for disqualification of employees who have resigned from service and for those who have been dismissed or removed from service. Hence, we do not find any

merit in the arguments advanced on behalf of the respondent that Regulation 22 makes an arbitrary and unreasonable classification repugnant to Article 14 of the Constitution by keeping out such class of employees. The view we have taken is supported by the judgment of this Court in the case of Reserve Bank of India v. Cecil Dennis Solomon & Anr. (supra). Before concluding we may state that Regulation 22 is not in the nature of penalty as alleged. It only disentitles an employee who has resigned from service from becoming a member of the fund. Such employees have received their retiral benefits earlier. The Pension Scheme, as stated above, only provides for a second retiral benefit. Hence, there is no question of penalty being imposed on such employees as alleged. The Pension Scheme only provides for an avenue for investment to retirees. They are provided avenue to put in their savings and as a term 18 or condition which is more in the nature of an eligibility criterion, the Scheme disentitles such category of employees as are out of it.”

24. We may only note that in the above discussed judgement, an argument assailing the Regulation for forfeiture of service, based on Article 14 of the Constitution of India was repelled. The provisions under the new Regulations were held not to be in the nature of penalty, but a disentitlement, as a consequence of having resigned from service and, thus, being disentitled from having become a member of the fund. There are other judgments also in the same line, but not laying down any additional principles and, thus, it would suffice to just mention them, i.e. M.R. Prabhakar & Ors. v. Canara Bank & Ors.¹⁰ and J.M. Singh v. Life Insurance Corporation of India & Ors.¹¹

25. There are some observations on the principles of public sectors being model employers and provisions of pension being beneficial legislations.¹² We may, however, note that as per what we have opined aforesaid, the issue cannot be dealt with on a charity principle. When the Legislature, in its wisdom, brings forth certain beneficial provisions in 10 (2012) 9 SCC 671 11 (supra) 12 Shashikala Devi v. Central Bank of India, (2014) 16 SCC 260; Asger Ibrahim Amin v. Life Insurance Corporation of India (2016) 13 SCC 797 19 the form of Pension Regulations from a particular date and on particular terms and conditions, aspects which are excluded cannot be included in it by implication. The provisions will have to be read as they read unless there is some confusion or they are capable of another interpretation. We may also note that while framing such schemes, there is an important aspect of them being of a contributory nature and their financial implications. Such financial implications are both, for the contributors and for the State. Thus, it would be inadvisable to expand such beneficial schemes beyond their contours to extend them to employees for whom they were not meant for by the Legislature.

26. We are, thus, of the view that the impugned orders in this case cannot be sustained and are liable to be set aside, and the writ petition filed by the respondent consequently stands dismissed. C.A. No.10904 of 2016

27. The appellant joined the respondent United India Insurance Company Limited as a Clerk on 13.8.1960 and served for a long period of 32 years. He, however, tendered his resignation on 1.10.1993 for “family reasons”, but on his own, termed it as “premature retirement”, so as to claim future benefits. Request for waiving of notice period was also 20 made. The letter of resignation was accepted on 30.11.1993, giving effect to such resignation from that day itself. It is relevant to note that at the time the appellant resigned, he was governed by the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976 (for short ‘1976 Scheme’), which had no concept of voluntary retirement. However, almost three years after the appellant resigned, an amendment was made to the 1976 Scheme by inserting clause 4(4A), introducing the concept of Voluntary Retirement Scheme on 1.11.1996. This clause, however, was made retrospectively applicable from 1.11.1993. It appears that the object was to have consonance with the General Insurance (Employees’) Pension Scheme, 1995 (hereinafter referred to as the ‘1995 Scheme’).

28. It is in the year 2011 that the judicial pronouncement by this Court in Sheel Kumar Jain v. New India Assurance Company Limited¹³ gave benefit of this scheme to certain employees. The judgment was delivered on 28.7.2011. Once again, almost after two years, the appellant made a representation dated 4.4.2013 seeking pension on the basis of the 1995 Scheme, resting his case on the aforesaid judgment. There was no response to this representation, resulting in the appellant filing a writ 13 (2011) 12 SCC 197 21 petition before the Bombay High Court. The Division Bench of the Bombay High Court, in terms of the impugned judgment dated 07.04.2016 rejected the same. The reasoning of the Division Bench was that the case of the appellant was of resignation and not of

voluntary retirement. The appellant had tendered his resignation before 1.11.1993, while the conditions for availing of the benefit were: (i) the employees must have retired on or after 1.11.1993, and before the notified date; and (ii) the employee must have exercised the option to voluntarily retire within 120 days from the notified date, to become a member of the General Insurance Corporation (Employees') Pension Fund while refunding the amount of Provident Fund contributed by the insurance company. These two aspects were stated to be absent in the case of the appellant, who had never opted for voluntary retirement within the requisite period nor refunded the amount, which were pre-requisites for availing the benefit of the new pension scheme.

29. The opinion of the Division Bench was also based on a relevant fact, that the condition in terms of clause 4(4A) required completion of 55 years of age, while the appellant was not of 55 years of age on the date of his resignation or its acceptance. The said clause reads as under: 22 “(4A) Notwithstanding anything contained in the foregoing subparagraphs, an Officer or a person of the Development staff may be permitted, subject to vigilance clearance, to seek voluntary retirement, - (a) on completion of 55 years of age or at any time thereafter on giving ninety days notice in writing to the appointing authority of his intention to retire; or Provided that on a written request from an officer or a person of the Development Staff, such notice may be waived in full or in part by the appointing authority; or (b) in accordance with the provisions contained in paragraph 30 of the General Insurance (Employees') Pension Scheme, 1995, made under section 17A of the General Insurance Business (Nationalisation) Act, 1972, (57 of 1972) and published under notification of the Government of India, in the Ministry of Finance (Department of Economic Affairs) Insurance Division number S.O. 585 (E) dated 28th June, 1995.”

30. The last relevant aspect is that the 1995 Scheme provided in clause 22 as under: “22. Forfeiture of service - Resignation or dismissal or removal or termination or compulsory retirement of an employee from the service of the Corporation or a Company shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.”

31. Thus, once again, there is this clause of forfeiture of service in case of resignation.

32. In order to elucidate the legal principle further, we may note that 23 Sheel Kumar Jain¹⁴ took note of the judgment of the three Judges' Bench in *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd. & Ors.*¹⁵ An uncovenanted employee of respondent-Company, paid on a monthly basis, sought to recover a sum as gratuity, for continued service rendered over 29 years, under the Retiring Gratuity Rules, 1937, after having resigned from service. The employee was paid the provident fund dues. The High Court of Patna opined against the employee. When the matter reached this Court, one of the contentions raised by the respondent Company was that the employee had resigned and not retired from service. It was noticed that Rule 1(g) defines 'retirement' as “the termination of service by reason of any cause other than removal by discharge due to misconduct.” The employee had not been removed by discharge due to misconduct. The termination of service, being on account of resignation, it was held to qualify within the definition of 'retirement' under the Rules. The rest of the judgment, dealing with the principles as to how gratuity should be treated, is not relevant.

33. We, thus, notice that all that was opined by the three Judges' Bench in the aforesaid case was based on the definition of 'retirement' as 14 (supra) 15 (1984) 3 SCC 369 24 per the Retiring Gratuity Rules, 1937, which was expansive and all inclusive, excluding only the removal by discharge due to misconduct. Thus, nothing more could have been read into this judgment.

34. We may also add that there are some observations in the aforesaid case that pension and gratuity are both retiral benefits and an employee, with long years of service should be assured social security to some extent, in the form of either pension or gratuity or provident fund, whichever retiral benefit is operative in the industrial establishment. In the given facts of the appeal before us, the benefit of provident fund has been given as that was the scheme applicable at the relevant stage of time. The principle laid down is not that all of them should be simultaneously be granted, but that, at least one of them should be granted, though there is no prohibition against more than one being granted.

35. In view of what we have discussed aforesaid, all three aspects stated by us are relevant and disentitle the appellant to any relief. We have already explained the difference between resignation and voluntary retirement. Mere categorisation by the appellant himself of his resignation as “premature retirement” is of no avail. The same principle 25 discussed aforesaid, of forfeiture of service, would be applicable here and the appellant did not have the requisite age when he resigned even were the 1976 Scheme to be made applicable.

36. We may also find that the appellant remained silent for years together and that this Court, taking a particular view subsequently, in Sheel Kumar Jain¹⁶, would not entitle stale claims to be raised on this behalf, like that of the appellant. In fact the appellant slept over the matter for almost a little over two years even after the pronouncement of the judgment.

37. Thus, the endeavour of the appellant, to approach this Court seeking the relief, as prayed for, is clearly a misadventure, which is liable to be rejected, and the appeal is dismissed. SLP(C) Nos.5716-5719 of 2016

38. Leave granted.

39. The appellants in this case were employees of the respondent Bank, viz., Andhra Bank, who resigned from service during the window period of 1991 and 1993 after giving three months' notice. The grounds for resignation varied. The employees were governed by the then 16 (supra) 26 existing Service Rules, being the Andhra Bank Officers' Service Regulations, 1982. It was much later that Andhra Bank (Employees) Pension Regulations, 1995 (for short 'Pension Regulations') were introduced, effective from its date of notification. There was no retrospectivity involved in this case. But the Pension Regulations were made applicable for employees, who 'retired' on or after 01.01.1986 but before 01.11.1993.

40. The appellants sought benefit under these Pension Regulations, even though they had 'resigned' from their job, which request was rejected.

41. A Division Bench of the Andhra Pradesh High Court, in terms of the impugned order dated 09.10.2015 rejected the petition filed by the appellants on the ground that when the appellants resigned, there was no Pension Regulations providing for voluntary retirement in existence, and merely because the Pension Regulations have been made applicable for persons retiring within a past period of window, it would not give the same benefit to the employees who had resigned from service. The reasoning of the judgment is predicated on M.R. Prabhakar & Ors. v. Canara Bank & Ors.¹⁷ 17 (supra) 27

42. It is relevant to note that M.R. Prabhakar & Ors.¹⁸ dealt with a similar scheme for employees of the Canara Bank, and the plea was that such of the employees who had resigned must be construed as voluntarily retired, thus, entitling them to pensionary benefits. Suffice to say that, once again, the principle was of differentiation between the concept of 'voluntary retirement' and 'resignation'. Regulation 2(y) as applicable to the employees of Canara Bank, being pari materia to Rule 2(y) under the Pension Regulations of 1995, had brought in 'voluntary retirement' in the definition of 'retirement', but had not considered it appropriate to bring in the concept of 'resignation'. Service jurisprudence, recognising the concept of 'resignation' and 'retirement' as different, and in the same regulations these expressions being used in different connotations, left no manner of doubt that the benefit could not be extended, especially as resignation was one of the disqualifications for seeking pensionary benefits, under the Regulations.

43. In view of the legal principles discussed by us hereinbefore, this appeal, thus, must also fail and, is accordingly dismissed. ¹⁸ (supra) 28 44. The net result of the aforesaid discussion is that C.A. No.14739 of 2015 is allowed while C.A.No.10904 of 2016 and C.A. Nos. 3138-3141 of 2019 @ SLP©Nos.5716-5719 of 2016 are dismissed, leaving the parties to bear their own costs. 45. The reference is answered accordingly. 46. We, however, make it clear that for amounts already paid to the respondent in C.A. No. 14739 of 2015, under the interim directions dated 26.11.2015, refund of the same would not be claimed.

.....C.J.I. [Ranjan Gogoi]
.....J. [Sanjay Kishan Kaul]
.....J. [K.M. Joseph]

New Delhi. March 15, 2019.

All Correspondence to:



B.Lakshminarayana, No.1317, 11th Main, 5th A Cross,
Srinivasanagar II Phase, B.S.K. III Stage,
BANGALORE – 560 050.

Mob:9845443998; Email:balana56@gmail.com

