

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.2131 of 1996

Date of Decision: September 30, 2015

H.C. Arora

....Petitioner

Versus

Union of India and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN**

Present: Shri H.C. Arora, Petitioner in person.

Shri G.S. Bajwa, Advocate, for respondent No.2, Punjab National Bank.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MAHAVIR S. CHAUHAN, J.

Can an employee be deprived of his pensionary benefits only because while leaving his job prematurely he used the term “Resignation” instead of “Voluntary Retirement”-is the conundrum that craves resolution in the instant writ petition under Articles 226/227 of the Constitution of India, brought by Shri H.C. Arora, a practicing Advocate of this Court, who, after serving the respondent No.2 – Punjab National Bank (for short – 'the bank') for more than twenty years, chose to leave his job, with the approval of the bank, but was not allowed the pensionary benefits under the Punjab National Bank (Employees) Pension Regulations, 1995 (for short, 'the Pension Regulations') even though it was made applicable to those

employees of the Bank who were in the service of the Bank on or after January 01, 1986 and had retired before November 01, 1993, on the ground that instead of seeking voluntary retirement, petitioner had resigned his job.

02. The petitioner, as per case set up in the petition and not disputed by the respondent-Bank, had joined New Bank of India as a Clerk-cum-Godownkeeper on temporary basis on December 31, 1972 and then on regular basis on August 18, 1973. On his representation his date of appointment was reckoned as December 31, 1972 by giving him benefit of service rendered by him on temporary basis in terms of Clause 20.8 of the Bipartite Settlement dated October 19, 1996. As there was no provision in the Service Regulations for voluntary retirement, the petitioner, while working as Manager Middle Management Grade-II, submitted resignation under Regulation 20(2) of the New Bank of India (Officers') Service Regulations, 1982 (for short, '1982 Regulations'). The resignation became effective from February 01, 1993 and the petitioner was relieved from duty on February 10, 1993.

03. New Bank of India was amalgamated with Punjab National Bank with effect from September 04, 1993 and as a consequence of the amalgamation, all the assets and liabilities of the former were transferred to, and taken over by, the latter.

04. On September 29, 1995, the respondent-Bank notified the Pension Regulations and prior thereto, vide Settlement dated October 29, 1993 entered into All India Bank Employees Association and Indian Banks Association, 58 Banks, including Punjab National Bank, had agreed to take the liability of granting pension to those employees of the merged banks who were in service of the merged bank on or after December 31, 1985 and

had retired from service on or after January 01, 1986 but before November 01, 1993. Though the Pension Regulations were made applicable to those employees of the bank who were in the service of the bank on or after January 01, 1986 and had retired before November 01, 1993 but the petitioner has not been allowed benefit of the same.

05. In the short reply filed by the respondent-Bank, facts, as enumerated in the petition, have not been disputed but petitioner's claim for grant of pensionary benefits to him under the Pension Regulations has been disputed saying that he had resigned from his job much prior to promulgation of the Pension Regulations and on the day the Regulations became effective he was not an employee of the respondent-Bank and that he himself having severed his relationship with the respondent-Bank, was not entitled to any benefit under the Regulations.

06. We have heard the petitioner and counsel for the respondent-Bank.

07. Though it is not in dispute that the petitioner would have been entitled to the pensionary benefits under the Pension Regulations had he voluntarily retired from service after November 01, 1993 but according to the respondent-Bank, the petitioner lost his right to be considered for grant of pensionary benefits by submitting resignation. Reliance on behalf of the respondent-Bank has been placed upon **UCO Bank and others versus Sanwar Mal, 2004(4) SCC 412: AIR 2004 Supreme Court 2135** to show that the term "retirement" does not include "resignation". Learned counsel for the respondent-Bank has submitted that resignation entails forfeiture of service disentitling the employee from claiming pensionary benefits in terms of Regulation 22 of the Pension Regulations which reads as under:-

“22. Forfeiture of service: (1) Resignation or dismissal or 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;

(2) An interruption in the service of a Bank employee entails forfeiture of his past service, except in the following cases, namely (a) authorised leave of absence; (b) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the bank employee dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension; (c) transfer to non-qualifying service in an establishment under the control of the Government or Bank if such transfer has been ordered by a competent authority in the public interest;

(d) joining time while on transfer from one post to another.

(3) Notwithstanding anything contained in sub-regulation (2), the appointing authority may, by order, commute retrospectively the periods of absence without leave as extraordinary leave.

(4) (a) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered by a bank employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service; (b) Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.”

08. It is not in cavil that in the year 1992 when the petitioner submitted his resignation, as also in the year 1993 when his resignation was accepted, there was neither a provision in the Service Regulations permitting an employee to seek voluntary retirement nor was a pension scheme in operation and, as such, the petitioner could not seek voluntary retirement and would not have been entitled to pensionary benefits even if he had sought and was allowed voluntary retirement. It is also admitted case of the parties that on the day of acceptance of notice of three months given by the petitioner to quit his job, he had at his credit sufficient service to

qualify for award of pension provided a pension scheme, like the Pension Regulations, was in place at that time. It has also not been disputed before us that the petitioner was entitled to quit his job prematurely by giving three months' notice in writing or by depositing three months' pay in lieu thereof and the Bank was empowered not to accept the request and to waive off the period of notice or any part of it. It is seen that Regulation 29 of the Regulations provides that after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority, retire from service. The parties are also *ad idem* that had the petitioner sought voluntary retirement after November 01, 1993, he would have been eligible for pensionary benefits under the Pension Regulations provided he opted to be a member of the pension fund within one hundred and twenty days from the notified date as required by Regulation 3(1)(b) and had refunded Bank's contribution to the Provident Fund with interest in terms of Regulation 3(c), to the respondent-Bank.

Regulation (3) provides as under:

“3. APPLICATION: These regulations shall apply to employees who, (1) (a) were in the service of the Bank on or after the 1st day of January, 1986 but had retired before the 1st day of November, 1993; and (b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and (c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (b) the entire amount of the Bank's contribution to the Provident Fund including interest accrued thereon together with a further simple interest at the rate of six percent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank...”

Regulation 29 lays down:

“29. Pension on Voluntary Retirement: (1) On or after the 1st day of November, 1993 at anytime after an employee has completed twenty years of qualifying

service he may, by giving notice of not less than three months in writing to the appointing authority retire from service; Provided that this sub-regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year; Provided further that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement; Provided that this sub-regulation shall not apply to an employee who is deemed to have retired in accordance with clause (1) of regulation 2.

(2). The notice of voluntary retirement given under sub-Regulation (1) shall require acceptance by the appointing authority; Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) (a) An employee referred to in sub-regulation (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) On receipt of request under clause (a), the appointing authority, may, subject to the provisions of sub-regulation (2), consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of three months.

(4) An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority; Provided that the request for such withdrawal shall be made before the intended date of his retirement.

(5) The qualifying service of an employee retiring voluntarily under this regulation shall be increased by a period not exceeding five years, subject to the condition

that the total qualifying service rendered by such employee shall not in any case exceed thirty-three years and it does not take him beyond the date of superannuation.

(6) The pension of an employee retiring under this regulation shall be based on the average emoluments as defined under clause (d) of regulation 2 of these regulations and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension.”

09. A between the lines reading of the Pension Regulations and from what has been argued before us, it surfaces that benefit of the Pension Regulations has been denied to the petitioner because (1) he resigned his job instead of seeking voluntary retirement and, thus, got the service rendered by him forfeited; (2) even if his resignation is deemed to be a request for voluntary retirement it would be inconsequential because it happened before November 01, 1993; (3) he did not exercise option within the period prescribed by Regulation 3(1)(b) and also did not refund Bank's contribution to the Provident Fund with interest under Regulation 3(c), to the respondent-Bank.

10. Term “Retire” has been defined in American Heritage Dictionary as “to withdraw from one's occupation, business, or office; stop working.” According to Compact Oxford Dictionary it means to “Leave one's job and cease to work especially because one has reached a particular age”. Meaning assigned to the word “Retire” in The Chambers Dictionary (12th Edition) is “To withdraw; to retreat; to recede; to withdraw from society, office, public or active life, business profession etc.” To resign means to voluntarily leave a job or office or say when an employee chooses to leave his office or job, he is said to have resigned. If the above mentioned two terms are read in juxtaposition to each other it comes out that to resign

means to retire before reaching a particular age, viz. the age of superannuation or say to retire prematurely. Regulation 2(y) of the Pension Regulations defines the term “Retirement” as under:

“Retirement” means cessation from Bank’s service;

(a) on attaining the age of superannuation specified in Service Regulations or Settlements;

(b) on voluntary retirement in accordance with provisions contained in regulation 29 of these regulations;

(c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or settlement.

11. No doubt in **UCO Bank and others versus Sanwar Mal** (supra), Hon’ble Supreme Court had ruled that “retirement” and “resignation” have different connotations but, as afore-stated, these observations came in a set of facts and circumstances wholly different from the facts and circumstances of the case in hand. It would be of immense benefit to refer here to a very recent judgment of the Hon’ble Supreme Court in **Sheelkumar Jain versus The New India Assurance Company Ltd. and Ors. (2011)12 SCC 197: AIR 2011 Supreme Court 2990**. In this case the petitioner was an employee of the New India Assurance Company Limited and after having completed 20 years of service, he gave a letter to the Management on 16.9.1991 saying that he would like to resign from his post and requested to treat the letter as three months' notice and to relieve him from service. The letter was accepted by the Management and the petitioner was informed that his resignation had been accepted by the competent authority with effect from 16.12.1991, i.e., after the completion of three months' notice period. After the introduction of the pension scheme, the petitioner therein made a request for sanction of pension and he had also

exercised the requisite option. The respondent therein did not consider his request favourably and, therefore, he approached the Madhya Pradesh High Court by filing a Writ Petition, wherein he sought a direction to pay pension under the Scheme. The Writ Petition was dismissed by the learned single Judge of the High Court, which was confirmed by the Division Bench. As against this, the employee preferred an appeal wherein the Hon'ble Supreme considered several decisions including the decision in the case of **UCO Bank and Others V. Sanwar Mal**, (supra), and examined the words 'resignation' and 'voluntary retirement'. Referring to the decision in the case of **UCO Bank and Others V. Sanwar Mal**, (supra), and in the case of **RBI V. Cecil Dennis Solomon, (2004) 9 SCC 461**, the Hon'ble Supreme Court observed that in those decisions, Court was not called upon to decide whether the termination of services of the employee was by way of resignation or voluntary retirement, whereas, in the case before the Supreme Court they were called upon to decide the issue whether the termination of the services of the appellant in 1991 amounted to resignation or voluntary retirement. Clause 22 of the Pension Scheme, 1995, in that case was to the effect that "Resignation or dismissal or removal or termination or compulsory retirement or 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." While such benefits were available in case of voluntary retirement under Clause 30 thereof. After considering the Scheme, the Hon'ble Supreme Court held as under:

"10. The Pension Scheme, 1995 was framed and notified only in 1995 and yet the Pension Scheme, 1995 was made applicable also to employees who had left the services of the Respondent No. 1-Company before 1995. Clauses 22 and 30 of the Pension Scheme, 1995 quoted above were not in existence when the Appellant

submitted his letter dated 16.09.1991 to the General Manager of Respondent No. 1-Company. Hence, when the Appellant served his letter dated 16.09.1991 to the General Manager of Respondent No. 1- Company, he had no knowledge of the difference between 'resignation' under Clause 22 and 'voluntary retirement' under Clause 30 of the Pension Scheme, 1995. Similarly, the Respondent No. 1-Company employer had no knowledge of the difference between 'resignation' and 'voluntary retirement' under Clauses 22 and 30 of the Pension Scheme, 1995 respectively. Both the Appellant and the Respondent No. 1 have acted in accordance with the provisions of Sub-clause (1) of Clause 5 of the Scheme, 1976 at the time of determination of service of the Appellant in the year 1991. It is in this background that we have now to decide whether the determination of service of the Appellant under Sub-clause (1) of Clause 5 of the Scheme, 1976 amounts to resignation in terms of Clause 22 of the Pension Scheme, 1995 or amounts to voluntary retirement in terms of Clause 30 of the Pension Scheme, 1995. Clause 22 of the Pension Scheme, 1995 states that resignation 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, but does not define the term "resignation". Under Sub-clause (1) of Clause 30 of the Pension Scheme, 1995, an employee, who has completed 20 years of qualifying service, may by giving notice of not less than 90 days in writing to the appointing authority retire from service and under Sub-clause (2) of Clause 30 of the Pension Scheme, 1995, the notice of voluntary retirement shall require acceptance by the appointing authority. Since 'voluntary retirement' unlike 'resignation' does not entail forfeiture of past services and instead qualifies for pension, an employee to whom Clause 30 of the Pension Scheme, 1995 applies cannot be said to have 'resigned' from service. In the facts of the present case, we find that the Appellant had completed 20 years qualifying service and had given notice of not less than 90 days in writing to the appointing authority of his intention to leave service and the appointing authority had accepted notice of the Appellant and relieved him from service. Hence, Clause 30 of the Pension Scheme, 1995 applied to the Appellant even though in his letter dated 16.09.1991 to the General Manager of Respondent No. 1-Company he

had used the word 'resign'."

12. A similar question came up for consideration before us in Punjabi University, Patiala and another versus Dr. Bhim Singh, LPA No. 1021 of 2014, decided on July 25, 2014. In that case, Dr. Bhim Singh (respondent therein), who had joined Punjabi University, Patiala (appellant therein) as a Lecturer on and with effect from November 28, 1984 and was promoted as a Reader on July, 27, 1987, had submitted his resignation which was accepted with effect from October 29, 2000. His request for grant of gratuity and leave encashment was, however, rejected by the appellant-University. To seek a direction to the appellant-University to release his gratuity and leave encashment, he filed Civil Writ Petition No. 5398 of 2001. Appellant-University contested respondent's claim on the plea that he was not entitled to the claimed relief under Regulation 2.14 of the University Calendar in so far as he had not completed fifteen years continuous service and resignation is not covered by the term "retirement". A Single-Judge Bench of this Court allowed the Civil Writ Petition holding the respondent entitled to gratuity as claimed by him. Relying upon ***Sheelkumar Jain versus The New India Assurance Company Ltd. and Ors.*** (supra), order of the Single-Judge Bench was upheld by the Letters Patent Bench holding as under:

"In view of the above, we are not inclined to accept appellants' plea that the respondent is not entitled to gratuity etc. only because he used the word "resign" instead of "voluntary retirement" in his notice dated October 29, 2000, which was accepted by the 2nd appellant by relaxing the requirement of three months notice period vide order dated November 21, 2000.

Dismissed."

13. In view of the above, more particularly the fact that in the year 1992 when the petitioner submitted his resignation, as also in the year 1993

when his resignation was accepted, there was neither a provision in the Service Regulations permitting an employee to seek voluntary retirement nor was a pension scheme in operation and, as such, the petitioner could not seek voluntary retirement and would not have been entitled to pensionary benefits even if he had sought and was allowed voluntary retirement, petitioner cannot be denied the benefits under the Pension Regulations only on the ground that he had resigned his job.

14. The Pension Regulations, as noticed here-in-above, as per Regulation (3)(1)(a) are made applicable to all the retirees who were in service of the respondent-Bank on or after the January 01, 1986 but had retired before November 01, 1993 and as per Regulation 2(y) retirement includes voluntary retirement. In such a situation restricting benefit of the Pension Regulations only to those who have sought voluntary retirement, after November 01, 1993 and that too without indicating towards any object to be thereby achieved, amounts to creating a class within a class which is violative of Article 14 of the Constitution of India being unreasonable and discriminatory. In this regard we may refer to the well-celebrated decision of the Supreme Court in the case of **D.S. Nakara v. Union of India, reported in (1983) 1 SCC 305 : AIR 1983 SC 130**. It was a case of revision of pensionary benefits and classification of pensioners into two groups by drawing a cut-off line and granting revised pensionary benefits to employees retiring on or after the cutoff date. The criterion made applicable was, "being in service and retiring subsequent to the specified date". The Supreme Court held that for being eligible for liberalised pension scheme, application of such a criterion was violative of Article 14 of the Constitution, as it was both arbitrary and discriminatory in nature. The

reason given by the Supreme Court was that the employees who retired prior to a specified date, and those who retired thereafter, formed one class of pensioners. The justification to classify them into separate classes/groups for the purpose of pensionary benefits was not founded on any intelligible differentia, which had a rational nexus with the object sought to be achieved. Supreme Court observed as under:

“42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle ? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who retired earlier cannot be worse off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension. One retiring a day earlier will have to be subject to ceiling of Rs. 8,100/-p.a. and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs. 12,000/-p.a. and average emolument will be computed on the basis of last ten months' average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no

nexus to the liberalised pension scheme but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours' difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore the classification does not stand the test of Article 14."

15. Question as regards exercise of option and refund of Bank's contribution towards Provident Fund need not hold this Court for long as it has been conceded on behalf of the respondent-Bank that the petitioner having resigned his job was not called upon to exercise his option whereas all other retirees were asked to do so. That being the situation, there was no occasion for the petitioner to opt for the pension scheme and refund Bank's contribution towards Provident Fund. The petitioner, therefore, cannot be denied the benefit of the Pension Regulations for this reason as well.

16. In the consequence, we accept the writ petition and dispose it of with the following directions:

- i. within fifteen days from the date of receipt of a copy of this judgment, the respondent-Bank shall calculate and convey in writing to the petitioner the amount payable by him as Bank's contribution towards Provident Fund as also interest payable thereon under the Pension Regulations;
- ii. within fifteen days of receipt of communication conveying to him the amount payable by him as Bank's contribution towards Provident Fund as also interest payable thereon, the petitioner shall deposit the same with the respondent-Bank;
- iii. within three months after deposit of Bank's contribution towards Provident Fund as also interest payable thereon by the petitioner, the respondent-Bank shall calculate and release the pensionary benefits payable to the petitioner, together with arrears accruing on that account; and
- iv. in the event of the respondent-Bank failing to release the

pensionary benefits payable to the petitioner, together with arrears accruing on that account to the petitioner within the above-stated period, the arrears accruing to the petitioner shall carry interest @6% per annum from the date of accrual till the date of payment/realisation thereof.

17. In the peculiar facts and circumstances of the case we leave the parties to bear their own costs.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIR S. CHAUHAN]
JUDGE

September 30, 2015
adhikari