

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

LPA No.735 of 2012 (O&M)

Date of Decision: October 09, 2015

Punjab National Bank and others ...Appellants

Versus

Virender Singh Siwach ...Respondent

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: - Mr. Surav Verma, Advocate for the appellants.

Mr. R.K. Malik, Sr. Advocate with
Mr. Vijay Dahiya, Advocate
for the respondent.

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HARINDER SINGH SIDHU, J.

This intra Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 23.02.2012 of the learned Single Judge, whereby, CWP No.8210 of 2011 filed by the respondent seeking quashing of order dated 01.02.2011 (Annexure P-17) declining the petitioner's request to exercise the second pension option and thereby denying him pensionary benefits, has been allowed.

The respondent was appointed as Security Officer in the appellant-Bank on 01.01.1985. Thereafter, he worked at various places and offices of the appellant Bank. On 01.07.2009 (Annexure P-2), he submitted a request for resignation from Bank service stating that in the past one year his service in the Bank had not been worthwhile. He had stated that due to his

continuous ill health he had been allowed leave by the Bank, but had not been paid four months salary despite his repeated requests. He stated that though he had intended to work in the Bank after his recovery, but the Bank did not consider his circumstances with objectivity and he had been subjected to four transfers within a period of one year. He requested that the communication be treated as three months' notice as prescribed under the Rules w.e.f. 01.07.2009. As wage negotiations were under way, he requested that in case it was decided to give a second option for pension to the Bank employees, he would like opt for the same.

The appellant-Bank replied vide letter 20.07.2009 observing that as the resignation tendered by the respondent appeared to be conditional, hence the same could not be accepted. The respondent was advised to submit unconditional resignation from Bank service. The respondent replied vide letter dated 20.07.2009 stating that the resignation letter dated 01.07.2009 had been misconstrued, that he had simply communicated the reasons for resigning and that there were no conditions specified in his resignation letter. He reiterated his request that his resignation be accepted from the due date. Vide letter dated 15.09.2009, the respondent was informed that in terms of his notice dated 01.07.2009, his resignation from Bank service was accepted by the competent authority w.e.f. 30.09.2009, the date on which three months' notice period

expired.

Before the acceptance of his resignation, vide letter dated 10.9.2009 the respondent was informed that as he is retiring voluntarily, in terms of the General Service Administration Circular dated 18.3.2009 he could purchase the furniture items provided at his residence and was asked to credit an amount of Rs.11264/- in the relevant account if he wished to purchase the same. The dues of the respondent were paid after recovering the sum of Rs.11,264/- which was the purchase cost of the furniture. The petitioner was, thereafter, also issued a certificate dated 13.11.2009 (Annexure P-8) stating that he had voluntarily retired on 30.09.2009 as Deputy Manager Security.

Initially, a settlement was signed at the industry level on 29.10.1993, pursuant to which, the appellant-Bank, in exercise of power conferred on it under Section 19 of the Banking Companies (Acquisition of Transfer of Undertakings) Act, 1970 framed the statutory PNB (Employees), Pension Regulations, 1995 under which pension was offered to eligible employees in lieu of Bank's Contribution to Provident Fund (CPF). The option in terms of Regulation 3(3)(b), of the Pension Regulation, 1995 was required to be exercised by the eligible employees within 120 days from 29.09.1995, the date when the Statutory Regulations were notified in the Gazette of India. The respondent, who was in service then, did not opt for pension and continued to remain in CPF Scheme.

On the persistent demand of the Workmen Union at Industry Level to provide one more option for pension to the employees who failed to exercise their option for pension in the year 1995, the Indian Banks Association agreed to accept the demand of Bank Union subject to certain terms which were agreed and reduced to writing in the form of settlement dated 27.04.2010, between Indian Banks Association on the one hand and the Workmen Union/Officers Association representing the existing/retired/officers. The appellant-Bank being signatory to Joint Note/Settlement dated 27.04.2010, offered one more option for pension to the eligible employees/eligible ex-employees/ family of deceased employees under Statutory Pension Regulation, 1995 and issued circular No.8/2010 dated 16.08.2010 inviting option from eligible employees/ eligible ex-employees/family of deceased employees in terms of Joint Note/settlement dated 27.04.2010, whereby, another option for joining the existing Pension Scheme was extended to:

“(A) Employees/ officers who were in the service of the bank prior to 29th Sept. 1995 and continued to be in the service of the bank on the date of settlement/joint note dated 27.04.2010 and thereafter or have retired on or after 27.04.2010.

(B) Employees/officers who were in the service of the bank prior to 29th September 1995 and retired after that date but prior to the date of settlement/joint note dated 27.04.2010.

(C) The family of those officers/employees who were in the service of the bank prior to 29th Sept.

1995, retired after that date and had died will be eligible for family pension.

(D) The family of those officers/employees who were in the service of the bank prior to 29th Sept. 1995, but have died while in service of the bank after that date but prior to 27.04.2010 will be eligible for family pension.

(E) The family of those officers/employees, who were in the service of the bank prior to 29th Sept. 1995 but have retired/died while in service of the bank on or after 27.04.2010 will be eligible for family pension.”

The respondent considering himself covered by the aforesaid Scheme submitted his pension option and deposited an amount of Rs.10,42,851/- being the amount of Banks' Contribution to provident fund together with funds received on retirement from service and funding gap portion 56% of Banks' Contribution to provident fund in the requisite Pension Fund Account of Bank at Delhi Cantt.

The respondent was informed vide letter dated 01.02.2011 (Annexure P-17) that he was not eligible for another pension option as he had resigned from the Bank service on 30.09.2009. It was stated that only Officers and workmen, who had opted for voluntary retirement under the Special Voluntary Scheme were eligible to exercise option to join the pension scheme.

The respondent filed the writ petition impugning the aforesaid order, which has been allowed.

The appellant-Bank had defended the action by stating that the respondent was not entitled to exercise the pension option as he had resigned from service. Reference was made to Punjab National Bank (Employees) Pension Regulations, 1995 in which the term 'Retirement' was defined in para 2(y) as under:

“2(y) “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”

It was contended that as the respondent had resigned from service and such resignation does not come within the purview of the definition of retirement in the Punjab National Bank (Employees) Pension Regulations, 1995, he was not eligible to exercise another option for pension in terms of the Joint Note dated 27.04.2010.

Learned Single Judge rejected the contentions relying on a decision of Hon'ble the Supreme Court in ***Sheelkumar Jain v. New India Assurance Co. Ltd., (2011) 12 SCC 197***, where the Hon'ble Supreme Court granted the benefit of the subsequent pension scheme introduced in the year 1995 to an employee who had resigned in 1991, by construing his

resignation letter as a voluntary retirement. The Hon'ble Supreme Court had held that the pension scheme must be so construed that the resignation must be treated as voluntary retirement under clause 30 of the General Insurance (Employees') Pension Scheme, 1995 and the general purpose of the scheme. Taking note of the fact that the employee had completed the qualifying years required for pension, the Court held that he could not be denied the benefit of pension.

Ld. Counsel for the appellant has raised the following arguments:

(i) This Court lacks territorial jurisdiction to adjudicate the issue. At the time of his resignation, the respondent was posted at Hamirpur. The resignation had been accepted by the circle office of the appellant bank at Hamirpur. The impugned order has also been passed by the same office at Hamirpur.

(ii) The judgment in Sheekumar Jain's case pertains to an Insurance Company where the provisions are different. It has been distinguished by the Hon'ble Supreme Court in ***M.R. Prabhakar v. Canara Bank, (2012) 9 SCC 671***. And as per the judgment in Prabhakar's case the respondent is not entitled to exercise the second pension option, as he had resigned from service and not retired therefrom. He also stressed that the consequences of 'resignation'

are different from 'retirement' in service law.

Learned counsel for the respondent on the other hand supported the order of the Ld. Single Judge. In addition to Sheelkumar's case he also relied on judgment of Karnataka High Court in **N Suresh Prabhu Vs. Corporation Bank and another (WP No.7245 of 2011 decided on 30.08.2012)**.

Having heard the Ld. Counsel for the parties we are of the view that the instant appeal deserves to be dismissed.

Ld. Counsel for the appellant has strenuously argued that this Court does not have territorial jurisdiction to decide this case.

Ld. Counsel may be right in his contention. But a perusal of the judgment of the Ld. Single Judge reveals that this point had not been argued before the Ld. Single Judge as there is no discussion on this aspect in the judgment. In this backdrop, it may not open to the appellants to raise this issue in the present intra court appeal.

It has been consistently held by the Hon'ble Supreme Court that an objection with regard to lack of territorial jurisdiction will not be taken up by the appellate or revisional court unless it has been taken up before the Court of first instance, at the earliest opportunity and there has been a consequential failure of justice. It has been held that for such an objection to sustain all the above three conditions must co-exist.

In this regard it was observed in ***Pathumma v. Kuntalan Kutty***,

(1981) 3 SCC 589, as under:

“4. We have heard learned Counsel for the parties on the question of jurisdiction. An unfortunate aspect of this litigation has been that although that question has been agitated already in three courts and has been bone of contention between the parties for more than a decade, the real provision of law which clinches it was never put forward on behalf of the appellant before us nor was adverted to by the learned District Judge or the High Court. That provision is contained in sub-section (1) of Section 21 of the Code of Civil Procedure which runs thus:

“No objection as to the place of suing shall be allowed by any appellate or revisional court unless such objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.”

5. In order that an objection to the place of suing may be entertained by an appellate or revisional court, the fulfilment of the following three conditions is essential:

“(1) The objection was taken in the Court of first instance.

(2) It was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement.

(3) There has been a consequent failure of justice.”

6. All these three conditions must co-exist. Now in the present case Conditions 1 and 2 are no doubt fully satisfied; but then before the two appellate courts below could allow the objection to be taken, it was further necessary that a case of failure of justice on account of the place of suing having been wrongly selected was made out. Not only was no attention paid to this aspect of the matter but no material exists on the record from which such failure of justice may be inferred. We called upon learned Counsel for the contesting respondents to point out to us even at this stage any reason why we should hold that a failure of justice had occurred by reason of Manjeri having been chosen as the place of suing but he was unable to put forward any. In this view of the matter we must hold that the provisions of the sub-section above extracted made it imperative for the District Court and the High Court not to entertain the

objection whether or not it was otherwise well founded. We, therefore, refrain from going into the question of the correctness of the finding arrived at by the High Court that the Manjeri Court had no territorial jurisdiction to take cognizance of the application praying for final decree.”

Similarly, it was observed in **Church of South India**

Trust Assn. v. Telugu Church Council, (1996) 2 SCC 520, as

follows:

“27. The question which, therefore, arises is whether the competence of the court, as contemplated in Section 11 of the present Code, extends to territorial jurisdiction also and the court which has decided the earlier suit should be a court having territorial jurisdiction to try the subsequent suit. Juridically speaking, the concept of jurisdiction of a court comprehends (i) pecuniary jurisdiction, (ii) territorial jurisdiction and (iii) jurisdiction of the subject-matter. (See: Hriday Nath Roy v. Ram Chandra Barna Sarma, ILR at p. 146; Official Trustee, W.B. v. Sachindra Nath Chatterjee, SCR at p. 100.) When Section 11 of the present Code talks of the competence of the court, does it mean competence in all the three aspects of the jurisdiction of the court including the territorial jurisdiction of the court? In order to answer this question, it is necessary to take note of some other provisions of the present Code which give an indication that the present Code makes a distinction between territorial jurisdiction and other aspects of the jurisdiction of the court. In Section 21 of the present Code, it has been provided that “No objection as to the place of suing shall be allowed by any appellate or revisional court unless such objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.” Having regard to the said provision, it has been held that though the defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of subject-matter of the action, strikes at the very authority of the court to pass any decree and such a defect cannot be cured even by consent of parties, the policy of the Legislature has been to treat objections to territorial jurisdiction as technical and not open to consideration by an appellate court,

unless there has been a prejudice on the merits. (See: Kiran Singh v. Chaman Paswan, SCR at pp. 121-22.) In that case, this Court has also taken note of Section 11 of the Suits Valuation Act, 1887, to hold that even objection as to the pecuniary jurisdiction is technical in nature and not open to consideration by an appellate court, unless there has been a prejudice on the merits. To the same effect in the decision in Seth Hiralal Patni v. Kali Nath wherein it has been held that (SCR p. 751) “The objection to its territorial jurisdiction is one which does not go to the competence of the Court and can, therefore, be waived.” In this context, reference may also be made to Section 21-A introduced by the Code of Civil Procedure (Amendment) Act, 1976, which lays down that: “No suit shall lie challenging the validity of a decree passed in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing.”

In **Kiran Singh v. Chaman Paswan, (1955) 1 SCR**

117, the Hon'ble Supreme Court observed as under:

“7. Section 11 enacts that notwithstanding anything in Section 578 of the Code of Civil Procedure an objection that a court which had no jurisdiction over a suit or appeal had exercised it by reason of overvaluation or undervaluation, should not be entertained by an appellate court, except as provided in the section. Then follow provisions as to when the objections could be entertained, and how they are to be dealt with. The drafting of the section has come in — and deservedly — for considerable criticism; but amidst much that is obscure and confused, there is one principle which stands out clear and conspicuous. It is that a decree passed by a court, which would have had no jurisdiction to hear a suit or appeal but for overvaluation or undervaluation, is not to be treated as, what it would be but for the section, null and void, and that an objection to jurisdiction based on overvaluation or undervaluation, should be dealt with under that section and not otherwise. The reference to Section 578, now Section 99 CPC, in the opening words of the section is significant. That section, while providing that no decree shall be reversed or varied in appeal on account of the defects mentioned therein when they do not affect the merits of the

case, excepts from its operation defects of jurisdiction. Section 99 therefore gives no protection to decrees passed on merits, when the courts which passed them lacked jurisdiction as a result of overvaluation or undervaluation. It is with a view to avoid this result that Section 11 was enacted. It provides that objections to the jurisdiction of a court based on overvaluation or undervaluation shall not be entertained by an appellate court except in the manner and to the extent mentioned in the section. It is a self-contained provision complete in itself, and no objection to jurisdiction based on overvaluation or undervaluation can be raised otherwise than in accordance with it. With reference to objections relating to territorial jurisdiction, Section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or Revisional Court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99 of the Civil Procedure Code and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained under Section 11 of the Suits Valuation Act.”

In the present case, neither was the objection regarding lack of territorial jurisdiction argued before the Ld. Single Judge nor is there any pleading or argument as to how appellants have been prejudiced in any manner. Thus there is no merit in the first contention of the Ld. Counsel for the appellant.

On merits, Ld. Counsel for the appellant has contended that the claim of the respondents was rightly rejected.

Main reliance has been placed on the decision of the Hon'ble Supreme Court in M.R. Prabhakar's case(supra). It has been argued that in Prabhakar's case, the earlier decision of the Hon'ble Supreme Court in Sheelkumar Jain's case was considered and distinguished by holding that Sheelkumar was a case relating to Insurance Companies and the provisions considered therein were different from those in the Banking Pension Regulations.

We have closely gone through the facts in Prabhakar's case and are of the view that the ratio thereof cannot be extended to the facts of the present case. In Prabhakar's case, the appellants had submitted their resignations between 24-7-1986 and 3-6-1993 prior to the signing of the statutory settlement dated 29-10-1993 under the Industrial Disputes Act, 1947 and the joint note dated 29-10-1993, with regard to the introduction of pension as a second retiral benefit in lieu of CPF. The appellants, placing reliance on the various provisions of the 1995 Regulations, submitted that the Pension Regulations were introduced as an additional benefit to the serving and retired employees. It was pointed out that an employee who had resigned from the Bank was held dis-entitled to pension only by operation of Regulation 22, as per which resignation entailed forfeiture of past service. If this Regulation was held operative against the appellants, it would result in absurd consequences since by forfeiture of entire past service,

such employees would not be entitled to any pensionary benefits including gratuity and provident fund. It was also argued that when the appellants resigned, Regulation 22 regarding forfeiture of service on resignation or dismissal did not exist.

The Hon'ble Court did not accept the contentions. It held that the appellants had not 'retired' from service but had 'resigned' from it. It was held that there was a well known difference between the two concepts of 'resignation' and 'retirement' in Banking Regulations of 1995 which had been pointed out in earlier cases.

Sheelkumar's case (*supra*) was distinguished by observing :

“19. We may point out that in Sheelkumar Jain this Court was dealing with an insurance scheme and not the pension scheme, which is applicable in the banking sector. The provisions of both the scheme and the Regulations are not in pari materia. In Sheelkumar Jain case, while referring to Para 5, this Court came to the conclusion that the same does not make distinction between “resignation” and “voluntary retirement” and it only provides that an employee who wants to leave or discontinue his service amounts to “resignation” or “voluntary retirement”. Whereas, Regulation 20(2) of the Canara Bank (Officers’) Service Regulations, 1979 applicable to banks, had specifically referred to the words “resignation”, unlike Para 5 of the Insurance Rules. Further, it is also to be noted that, in that judgment, this Court in para 30 held that the Court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement.”

The case was concluded against the appellants by further observing as under:

“20. The appellants, when tendered their letters of resignation, were governed by the 1979 Regulations. Regulation 20(2) of the 1979 Regulations dealt with resignation from service and they tendered their resignation in the light of that provision. We are of the view that the appellants have failed to show any pre-existing rights in their favour either in the statutory settlement/joint note dated 29-10-1993 or under the 1995 Regulations. The appellants had resigned from service prior to 1-11-1993 and, therefore, were not covered by the statutory settlement, joint note dated 29-10-1993 and the 1995 Regulations. They could not establish any pre-existing legal, statutory or fundamental rights in their favour to claim the benefit of the 1995 Regulations. Consequently, the reliance placed by the appellants either on Regulation 29 or Regulation 22 in support of their contentions, cannot be accepted, since they are not covered by the scheme of pension introduced by the banks with effect from 1-11-1993.”

It was held that when the appellants tendered their letters of resignation, they were governed by the 1979 Regulations. Regulation 20(2) of the 1979 Regulations dealt with resignation from service and they had submitted their resignation under that provision. It was held they had resigned from service prior to 1-11-1993 and, therefore, were not covered by the statutory settlement, joint note dated 29-10-1993 and the 1995 Regulations. Thus, they could not establish any pre-existing legal, statutory or fundamental rights in their favour to claim the benefit of the 1995 Regulations.

The facts in the present case are different. Unlike in **Prabhakar's case**, wherein at the time when the appellants (therein) had submitted their resignations, there was no provision for retirement and there was only a provision for resignation, in the instant case, when the respondent had submitted his

resignation in 2009, the 1995 Pension Regulations were in existence, under which there was a provision for seeking voluntary retirement on completion of 20 years of service by giving notice of not less than three months in writing to the appointing authority.

The Hon'ble Supreme Court in **Shashikala Devi Vs Central Bank of India and ors** 2015(2) RSJ 171 has held that the question whether the letter of the employee was one of resignation or for voluntary retirement, depends on the circumstances in which the letter was written by the employee. It was held that mere expression used in the letter would not be determinative. In that case, the Hon'ble Supreme Court on a reference to the letter, wherein, the employee had spelt out the reasons for resigning based on his medical condition, and attendant circumstances concluded that the employee had, in fact, sought voluntary retirement and never intended to resign from service. The relevant observations of the Hon'ble Supreme Court are:

“7. In the case at hand, Mauzi Ram-the deceased employee had rendered nearly 34 years of service in the respondent-bank. He was, therefore, qualified to receive pension in terms of the Regulations applicable to him. It is also evident from a reading of Regulation 29 that the deceased-employee was entitled to seek voluntary retirement in terms of Regulation 29 for he had completed more than twenty years of service by the 8th October, 2007. As on 8th October, 2007 the deceased-employee was entitled either to resign from service or to seek premature retirement in terms of Regulation 29 (supra). The question in that backdrop is

whether letter dated 8th October, 2007 was a letter of resignation simpliciter or could as well be treated to be a letter seeking voluntary retirement. The High Court, as seen earlier, has taken the view that the letter was one of resignation that resulted in the forfeiture of past service under Regulation 22 of the Regulations. The High Court appears to have been impressed by the use of the word "resignation" in the employee's letter dated 8th October, 2007. The use of the expression "resignation", however, is not, in our opinion, conclusive. That is, in our opinion, so even when this Court has always maintained a clear distinction between "resignation" and "voluntary retirement". Whether or not a given communication is a letter of resignation simpliciter or can as well be treated to be a request for voluntary retirement will always depend upon the facts and circumstances of each case and the provisions of the Rules applicable. The distinction between the expressions "resignation" and "voluntary retirement" was elaborately discussed by this Court in **UCO Bank and Ors. v. Sanwar Mal, 2004(2) S.C.T. 440 : (2004) 4 SCC 412** where this Court was examining the provisions of UCO Bank (Employees') Pension Regulations 1995 applicable to a bank employee who had resigned from service after giving an advance notice to the appointing authority. So also in **Reserve Bank of India and Anr. v. CECIL Dennis Solomon and Anr., 2004(1) S.C.T. 326 : (2004) 9 SCC 461** this Court was considering the provisions of the Reserve Bank of India Pension Regulations, 1990 while it made a distinction between what is resignation on the one hand and voluntary retirement on the other. At the same time a long line of decisions have recognised that pension is neither a bounty nor a matter of grace but is a payment for past services rendered by the employee. Decisions of this Court in **D.S. Nakara and Ors. v. Union of India, (1983) 1 SCC 305**, and **Chairman Railway Board and Ors. v. C.R. Rangadhamaiah and Ors., 1997(3) S.C.T 722 : (1997) 6 SCC 623**, are clear pronouncements on the subject. Reference may also be made to **Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd. and Ors., (1984) 3 SCC 369** where this Court observed:

*"18. For centuries the courts swung in favour of the view that pension is either a bounty or a gratuitous payment for loyal service rendered depending upon the sweet will or grace of the employer not claimable as a right and therefore, no right to pension can be enforced through court. This view held the field and a suit to recover pension was held not maintainable. With the modern notions of social justice and social security, concept of pension underwent a radical change and it is now well-settled that pension is a right and payment of it does not depend upon the discretion of the employer, nor can it be denied at the sweet will or fancy of the employer. **Deokinandan Prasad v. State of Bihar, (1971) 2 SCC 330, State of Punjab v. Iqbal Singh, (1976) 2 SCC 1 and D.S. Nakara v. Union of India, (1983) 1 SCC 305.** If pension which is the retiral benefit as a measure of social security can be recovered through civil suit, we see no justification in treating gratuity on a different footing. Pension and gratuity in the matter of retiral benefits and for recovering the same must be put on par."*

After referring to various judgments, where it had been held that while interpreting a statute the Court ought to keep the legislative intent in mind and eschew an interpretation which tends to restrict, narrow or defeat its beneficial provisions the Hon'ble Supreme Court proceeded to hold:

"12. Let us now examine the true purport of the letter submitted by the deceased-employee in the light of the above principles. Two distinct aspects stand out from the record. The first is that the deceased-employee had served for more than 34 years in the bank and was, therefore, entitled to seek voluntary retirement if he chose to leave prematurely. The second aspect which is equally important is that the employee had chosen to leave the employment not because of any disciplinary or other action proposed against him or any order of transfer or

posting with which he was unhappy or because any proceedings had been started that could have visited him with any civil consequence if he had continued in service, but because of his physical inability to continue in service on account of diseases with which he was stricken. This is evident from the fact that not only in the letter, but also in documents enclosed therewith the employee has laid great stress on the reasons for leaving the service prematurely. No such reasons were necessary if the employee actually intended to resign in the true sense of that term. Reasons why he was quitting were obviously meant to support his case that he was doing so under the compulsion of the circumstances. This is evident from letter dated 23rd November, 2007 from the Regional Manager which has recognised the poor health condition of the deceased-employee and sanctioned 165 days without pay leave in his favour. It is also evident from letter dated 29th November, 2007 by which the acceptance of the request of the employee was communicated to him that the employer had taken note of his failing health, expressed the management's sympathy with him and wishing him early recovery from his illness. The letter recognises the commitment of the employee to his duties and the contribution made by him in the growth of the organisation. To that extent there is thus no communication gap between the employee and the employer. The employee's case, however, is that all that he intended to do was to seek premature/voluntary retirement from service. This is, accordingly to the employee, evident also from his letter dated 18th December, 2007 addressed within three weeks of the acceptance of the request by the bank. In the said letter the deceased-employee, inter alia, said:

"As such, as per the said representation I requested to accept my resignation from the service. The whole reason and purpose, which I have submitted and stated through my said representation and my left over service of one and half year have forced my conscience to seek voluntary retirement from the service and not resignation from the service in its literal

meaning."

13. The letter once again enclosed with it medical certificates and prescriptions in support of his request that the letter written earlier and the expression used therein may be understood in the right spirit and terminal benefits released in his favour. The refusal of the management of the bank to treat letter dated 8th October, 2007 as a request for premature retirement was conveyed to the employee on 24th June, 2008 in which the respondent-bank made reference to the decision of this Court in UCO Bank's case (supra) whereby Regulation 22 of the Pension Regulations was upheld by this Court.

14. When viewed in the backdrop of the above facts, it is difficult to reject the contention urged on behalf of the appellant that what the deceased-employee intended to do by his letter dated 8th October, 2007 was to seek voluntary retirement and not resignation from his employment. We say so in the light of several attendant circumstances. In the first place, the employee at the time of his writing the letter dated 8th October, 2007 was left with just about one and a half years of service. It will be too imprudent for anyone to suggest that a bank employee who has worked with such commitment as earned him the appreciation of the management would have so thoughtlessly given up the retiral benefits in the form of pension etc. which he had earned on account of his continued dedication to his job. If pension is not a bounty, but a right which the employee acquires on account of long years of sincere and good work done by him, the Court will be slow in presuming that the employee intended to waive or abandon such a valuable right without any cogent reason. At any rate there ought to be some compelling circumstance to suggest that the employee had consciously given up the right and benefit, which he had acquired so assiduously. Far from the material on record suggesting any such conscious surrender abandonment or waiver of the right to retiral benefit including pension, we find that the material placed on record clearly suggests that the employee had no source of income or sustenance except the benefit that he had

earned for long years of service. This is evident from a reading of the letter dated 8th October, 2007 in which the employee seeks release of his retiral benefits at the earliest to enable him to undergo medical treatment that he requires. The letter, as seen earlier, lays emphasise on the fact that for his sustenance the employee is dependent entirely on such benefits. It is in that view difficult for us to attribute to the employee the intention to give up what was rightfully his in terms of retiral benefits, when such benefits were the only source not only for his survival but for his medical treatment that he so urgently required. For a waiver of a legally enforceable right earned by an employee, it is necessary that the same is clear and unequivocal, conscious and with full knowledge of the consequences. No such intention can be gathered from the facts and circumstances of the instant case. The employee's subsequent letters and communication which are placed on record cannot be said to be an afterthought. Being proximate in point of time letter dated 8th October, 2007 must be treated to be a part of the subsequent communication making the employee's intentions clear, at least for purposes of determining the true intention underlying the act of the employee.

15. It is, in our opinion, abundantly clear that the beneficial provisions of a Pension Scheme or Pension Regulations have been interpreted rather liberally so as to promote the object underlying the same rather than denying benefits due to beneficiaries under such provisions. In cases where an employee has the requisite years of qualifying service for grant of pension, and where he could under the service conditions applicable seek voluntary retirement, the benefit of pension has been allowed by treating the purported resignation to be a request for voluntary retirement. We see no compelling reasons for doing so even in the present case, which in our opinion is in essence a case of the deceased employee seeking voluntary retirement rather than resigning."

The Hon'ble Supreme Court also referred to earlier decisions where, in somewhat similar circumstances, the

resignation tendered and accepted was held to tantamount to retirement from service:

*“16. We may at this stage refer to a few decisions of this Court in which somewhat similar questions have been examined and answered by this Court. In **Sudhir Chandra Sarkar v. Tata Iron and Steel Company Ltd. and Ors., (1984) 3 SCC 369**, a permanent uncovenanted employee of the company had served for 29 years whereafter he tendered his resignation which the employer accepted unconditionally. The Company's Retiring Gratuity Rules did not provide for payment of gratuity to employees who resigned from service. This Court while reversing the view taken by the High Court held that termination of service by resignation was tantamount to retirement by resignation entitling the employee to retiral benefits. The following passage is apposite in this regard:*

"7. The contention of the respondent is that the plaintiff did not retire from service but he left the service of the Company by resigning his post. This aspect to some extent agitated the mind of the High Court. It may be dealt with first. It is not only in dispute, but is in fact conceded that the plaintiff did render continuous service from December 31, 1929 till August 31, 1959. On exact computation, the plaintiff rendered service for 29 years and 8 months. Rule 6(a) which prescribed the eligibility criterion for payment of gratuity provides that every permanent unconvenanted employee of the Company whether paid on monthly, weekly or daily basis will be eligible for retiring gratuity which shall be equal to half a month's salary or wages for every completed year of continuous service subject to a maximum of 20 years' salary or wages in all provided that when an employee dies, retires or is discharged under Rule 11(2)(ii) and (iii) before he has served the Company for a continuous period of 15 years he shall be paid a gratuity at the rate therein mentioned. The expression

"retirement" has been defined in Rule 1(g) to mean "the termination of service by reason of any cause other than removal by discharge due to misconduct". It is admitted that the plaintiff was a permanent uncovenanted employee of the Company paid on monthly basis and he rendered service for over 29 years and his service came to an end by reason of his tendering resignation which was unconditionally accepted. It is not suggested that he was removed by discharge due to misconduct. Unquestionably, therefore, the plaintiff retired from service because by the letter Annexure 'B' dated August 26, 1959, the resignation tendered by the plaintiff as per his letter dated July 27, 1959 was accepted and he was released from his service with effect from September 1, 1959. The termination of service was thus on account of resignation of the plaintiff being accepted by the respondent. The plaintiff has, within the meaning of the expression, thus retired from service of the respondent and he is qualified for payment of gratuity in terms of Rule 6."

The same appears to be the position in the instant case as well.

In this case, at the time when the respondent left service, he had more than 25 years of service to his credit and was eligible to seek voluntary retirement as per the Bank Regulations. The respondent in his communication dated 1.7.2009 (Annexure P-2), whereby he tendered his resignation, had specified that the communication be treated as three months notice as prescribed under the Rules. He had also given reasons for the resignation namely his ill health, frequent transfers and non-payment of the salary for four months. He had also specifically indicated that as wage negotiations were underway, he would like to opt for pension in case it was decided to give a

second option for pension to Bank employees. When the appellants wrote back to the respondent by pointing out that the resignation appeared to be conditional and advising him that he should submit an unconditional resignation, the respondent replied vide letter dated 27.7.2009 (Annexure P-4), by stating that his letter had been misconstrued and he had only narrated the reasons for his resigning from the bank i.e., his ill health and frequent transfers and clarified that there were no conditions attached to the resignation letter. Thereafter, the resignation was accepted by the competent authority on expiry of the three month period. He was given the option to purchase the furniture items at his residence which is permissible only in cases of retirement. A certificate dated 13.11.2009 (Annexure P-8) was also issued by the appellants stating that the respondent had voluntarily retired on 30.09.2009. Thus, not only was the intention of the respondent to voluntarily retire, even the appellants treated and processed his case as being one of voluntary retirement. If it were to be a resignation, no notice was required on either side, and the resignation could have been tendered and accepted straightaway. The respondent had clearly indicated that he intended to exercise the option for pension if the same was conceded to the Bank employees in future in view of the impending negotiations on the subject between the Banks and the employees unions. His subsequent letter explaining that the resignation was unconditional cannot be extended to

mean that he had given up his claim to exercise the option should it be conceded to the Bank employees in future.

In these circumstances, the plea of the appellant-Bank does not merit acceptance.

The Karnataka High Court in **N Suresh Prabhu's** case (supra), considered a similar issue. The questions that were posed by the Court were as under:

“34. Having heard to the rival contentions raised by both the parties, the points that arise for consideration in these writ petitions are:

- 1. Whether the dismissal of Civil Appeal No.1364, 1365, 1366, 1367, 1368,1369, 1371/2008 disentitle the appellants therein from invoking the second option under joint note date 27.04.2010?*
- 2. Whether the Officer is tendering his resignation even after having rendered qualifying service becomes ineligible to exercise his option under the joint note?*
- 3. Whether the voluntary retirement under Clause 19 of O.S.R. is covered under the terms of the joint note?*
- 4. Whether Exit Option Scheme is outside the scope of joint note?*
- 5. Whether the relief sought for by the petitioners involves the interpretation and alteration of the terms of the joint note?*

35 to 43. xx xx xx”

Answering in favour of the petitioners it was observed:

“44. Thus, from the above observation, it leaves no doubt in my mind that, what is required is not the

nature of retirement, but what is required is minimum qualifying service and the fulfillment of all other conditions and not the manner in which his service came to an end, if such cessation was not punitive, but voluntary or under any scheme formulated by the Banks. If the resignation was not punitive and was voluntary and such employees had to his credit minimum qualifying service, such employees if complies with the other conditions, he cannot be denied of pensionary benefit.

46 to 63. xx xx xx

64. *In these case, facts are not in dispute that, all these petitioners were in service prior to 29.09.1995 and they have put in more than 20 years of qualifying services as per Regulation 29 of the Pension Regulations, all of them were qualified to opt for voluntary retirement under Clause 29 of Pension Regulations. May be, they might have been retired or ceased to be an employee under different schemes, but none of them either have been forced to retire or their cessation from service was, as a punitive measure.”*

Accordingly, there is no merit in the appeal and the same is dismissed.

(SATISH KUMAR MITTAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

October 09, 2015
Atul