IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1014 OF 2012

Prakash Parshuram Mavlankar	}	
Age 68 years, Indian Inhabitant,	}	
residing at 505, Shri. Sainath	}	
Estate Co-op. Hsg. Soc. Ltd.,	}	
Mulund Octroi Naka, Mulund (E),	}	
Mumbai – 400 081	}	Petitioner
versus		
1. Haffkine Bio Pharmaceuticals	}	
Corporation Ltd.	}	
Acharya Donde Marg, Parel,	}	
Mumbai – 400 012	}	
	}	
2. State of Maharashtra	}	
Through the Government Pleader,	}	
Original Side, High Court Bombay	}	Respondents

Mr. Ashok Kumar S. Dubey for the petitioner.

Ms. N. R. Patankar with Mr. Nikhil Patil i/b. Mr. V. P. Sawant for respondent no. 1.

Mr. A. L. Patki – Additional Government Pleader for respondent no. 2.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

Reserved on 3rd MARCH, 2017
Pronounced on 4th APRIL, 2017

Judgment :- (Per S. C. Dharmachikari, J.)

1. The claim in the present petition is of pension. Since we had directed the Registry to list all matters related to pension and

pensionary claims out of turn, even this matter was listed, though under caption “for directions”, but with the consent of the advocates appearing for both sides, we took it up for hearing and final disposal. Even otherwise the matter was ready for final disposal. On 30th August, 2012, this court passed the following order:-

> “1. Issue notice to the Respondents, returnable on 14th September, 2012. Notice to state that this Writ Petition may be finally disposed of at the admission stage.
>
> 2. The learned Counsel for Respondent Nos. 1 and 2 waive notice on behalf of their respective parties.”

2. Then, on 24th June, 2014, the petition was allowed to be amended by incorporating a challenge to the validity of Government Resolution dated 17th October, 1967, copy of which was annexed as Exhibit 'A' to the affidavit in reply of the second respondent. On that date, the petition was formally admitted.

3. Shortly stated, the facts are these. The petitioner before us is an Indian citizen. The first respondent is a corporation, though registered as a company, but wholly controlled by the second respondent State.

4. The petitioner states that he was in service with erstwhile Haffkine Institute, Government of Maharashtra from 5th June, 1965 to 31st August, 1975 i.e. 10 years, 2 months and 26 days.

The said erstwhile Haffkine Institute was thereafter bifurcated by the State of Maharashtra in the year 1975 by a Government Resolution dated 30th April, 1975 in two autonomous bodies, namely, (i) Haffkine Institute of Teaching, Research and Training and (ii) Haffkine Bio-Pharmaceutical Corporation on the terms and conditions set out therein. Para 4 of the Government Resolution dated 30th April, 1975 reads as under:-

> "On discharge from the Government Service the Government servants concerned should be provided, with effect from the said date, with an appointment to the corresponding and equivalent posts in the new Institute or Corporation, as the case may be in the same scale and allowances at present admissible to them. On such appointment their terms and conditions of service under the new Institute or Corporation should not be less favourable than their existing terms and conditions of service and in particular, their terms and conditions pertaining to their existing scales of pay and allowances, pensionary benefits, provident fund, leave, medical benefits, facility to continue in Government accommodation and other benefits shall be protected as specified in Appendix 'A' to this G. R. However, such a protection shall not extend to matters pertaining to their future promotions, which will be governed by the rules and regulations made by their new employers. The service rendered by them under Government will count for their pensionary and all other benefits as if it was a service rendered under the new body"

5. The petitioner states that he was thereafter transferred to Haffkine Bio-Pharmaceutical Corporation from 1st September, 1975 on the terms and conditions set out in the said Government Resolution dated 30th April, 1975. The petitioner states that the petitioner was in continuous service of respondent no. 1 from 1st September, 1975 to 28th June, 1985 i.e. 9 years, 9 months and 28

days. The petitioner states that he resigned from service with respondent no. 1 on 28th June, 1985.

6. The petitioner further states that a writ petition being Writ Petition No. 515 of 2001 was filed by Haffkine Bio-Pharmaceutical Corporation Employees Union and others before this court. The said writ petition was finally heard and disposed of by judgment dated 4th October, 2006 passed by a Division Bench of this court presided over by Hon'ble Mr. Justice F. I. Rebello (as His Lordship then was) and Hon'ble Mr. Justice Anoop V. Mohta. The Division Bench directed the respondents to make payment after considering the respective cases of the petitioners within six months.

7. The petitioner further states that pursuant to the order and judgment dated 4th October, 2006 passed by this court in the above writ petition, the respondents did not pay the pensionary benefits to the petitioner. Therefore, the petitioner sent letter dated 9th January, 2009 addressed to the Managing Director of respondent no. 1 along with necessary documents and requested to release his pension and other dues as per judgment dated 4th October, 2006.

8. The petitioner further states that the petitioner received a letter dated 12th February, 2009 from respondent no. 1 informing

that the pension claimed by the petitioner is in respect of his employment with the Government of Maharashtra, namely, for the period prior to the formation of the Corporation. Therefore, the correspondence in respect of pension scheme should be made with respondent no. 2 directly.

9. The petitioner further states that the petitioner received a letter dated 24th November, 2009 from respondent no. 1 informing that vide the Government's orders dated 3rd August, 2009 and 26th August, 2009, the petitioner's pension matter is sent to respondent no. 2 on 24th November, 2009 for sanction. Therefore, the further inquiry for pension be made with respondent no. 2.

10. The petitioner further states that he sent a notice dated 22nd March, 2010 through his advocate to respondent no. 1 and requested to settle the petitioner's pension claim. The petitioner received letter dated 30th March, 2010 from respondent no. 2 informing that on verification of the service book, it is understood that the petitioner has resigned after absorption. As per Government Resolution No. PEN/1067/49/67-X dated 17th October, 1967, such resigned persons are not entitled to get restoration of pension or capitalized value of pension.

11. The petitioner further submits that his advocate received letter dated 5th April, 2010 from respondent no. 1 informing that the pension documents of the petitioner were submitted in the office of the Accountant General, PR-10, Maharashtra–I in November, 2009. They further informed that the Accountant General will decide the same and inform the petitioner directly.

12. The petitioner states that he addressed letter dated 26th April, 2010 to the Deputy Secretary of the second respondent, bringing to his notice that the Government Resolution dated 17th October, 1967 is not applicable to him. The petitioner claims that he has completed his qualifying service of 10 years with respondent no. 2. Therefore, he is entitled to the benefit flowing from this court's order dated 4th October, 2006 (supra). Annexure 'I' is the copy of this letter dated 26th October, 2010. The petitioner again sent a notice, copy of which is at Annexure 'J' to the petition. The petitioner then received a letter dated 21st May, 2010 from the Medical Education and Drugs Department of the second respondent-State informing him that he has resigned from the service of respondent no. 1 on 28th June, 1985. In terms of the order and directions of this court dated 4th October, 2006 referred above, the petitioner's pension claim along with 84 other employees was forwarded to the Accountant General's office.

That office informed that the petitioner having resigned from the service of respondent no. 1, as per the above Government Resolution, he is not entitled for pension or pensionary benefits. The Accountant General's office once again requested the respondents to verify whether the petitioner has indeed resigned from the service of respondent no. 1.

13. The petitioner also received a letter dated 7th October, 2010, copy of which is at Annexure 'L', which is on identical lines.

14. The petitioner once again reiterated his request by his letter dated 30th October, 2010, but finding that there was no response, he went on pressing the request for pension. The respondent nos.1 and 2 both informed him that he is not entitled to such pension. The petitioner relies upon Annexures 'N', 'O' and 'P' to the petition in that regard. The further communications at Annexures 'Q' and 'R' are but a reiteration of the respondents earlier stand. That stand and approach of the respondents has been adverted to by us already hereinabove.

15. In the affidavit in reply, which was filed to this writ petition by Mr. Sachindeo Wamanrao Borkar, the General Manager (Administration) of the first respondent, it is stated that under Government Resolution dated 26th November, 1973, the

Government of Maharashtra issued orders regarding conversion of the erstwhile Haffkine Institute, Mumbai into two autonomous bodies, namely, (i) Haffkine Institute for Teaching, Research and Training and (ii) Haffkine Bio-Pharmaceutical Corporation. By a further Government Resolution dated 30th April, 1975, the Government of Maharashtra directed that the then Haffkine Institute working as a Government Department should be closed and the institute and the corporation as mentioned above should start functioning from 1st September, 1975. By the Government Resolution, the Government further directed that consequent to the closure of the then Haffkine Institute, all the posts on the establishment thereof should be abolished with effect from 1st September, 1975 and the Government servant holding the said post should, subject to the directions mentioned in the said Resolution dated 30th April, 1975, be discharged. By a modified Government Resolution, the Government of Maharashtra also directed that on discharge of the Government service, the Government servants working in the erstwhile Haffkine Institute should be provided, with effect from 1st September, 1975, with appointment to the corresponding and equivalent post in the new institute or corporation as the case may be, in the same scale and allowances at present admissible to them. The Government Resolution further stated that on such appointment, the terms and conditions of the concerned employees under the new institute/corporation should not be less favourable than their existing terms and conditions of service, particularly their pay and allowances, pensionary benefits, provident fund, leave, medical benefits, facility to continue in Government accommodation and other benefits shall be protected as specified in Appendix 'A' to the Government Resolution dated 30th April, 1975. Clause (v) of this Appendix has been relied upon insofar as the pensionary liability. According to the deponent, the pensionary liability in respect of the service rendered under the Government by a permanent employee, who will be eligible for pension, will be of the Government and the pension will be payable. That pension will be payable when the employee is officially retired from the institute and the corporation on attaining the age of 50 years and 55 years.

16. It is in these circumstances, it is stated that the petitioner was in the employment of respondent no. 1 with effect from 1st September, 1975. The petitioner exercised his option for employment with respondent no. 1 and consequent upon the same, he came to be discharged from the employment of the State Government. The respondent no. 1 corporation states that the pension claimed by the petitioner is in respect of the service

rendered by him with the erstwhile Haffkine Institute, a Government Department. Therefore, it is important to note that the service conditions of the employees of the first respondent do not provide for pension to its employees for the service rendered by them to the corporation. The commuted value of the pension and the amount of death-cum-retirement gratuity pertaining to the petitioner was transferred by the State Government to the first respondent and the first respondent, in turn, deposited the same with the office of the Regional Provident Fund Commissioner. The employees of the first respondent corporation, on retirement/resignation from the services of the corporation, obtained, from the Regional Provident Fund Commissioner's office, the commuted value of pension for the services rendered by them to the erstwhile Haffkineg Instutite.

17. The petitioner's employment with the State Government in Haffkine Institute was for 10 years, 2 months and 27 days. The petitioner resigned from the employment of the first respondent corporation with effect from 28th June, 1985. The petitioner's case, according to the deponent of this affidavit, is covered by the order of this court dated 4th October, 2006 (supra). It is in these circumstances that the first respondent recommended to the Government in writing on 14th June, 2010 that according to it,

the petitioner is eligible for pension. The first respondent did not object for payment of such pension. However, it is the State of Maharashtra, which informed the first respondent in writing by letter dated 21st September, 2011 that in view of the petitioner having resigned from the employment of the first respondent corporation, he is not eligible for pension. The detailed correspondence on this subject is referred in para 3 of the affidavit in reply. Finally, it is contended that as far as the matter at hand, the issue involved therein is entirely between the petitioner and the State Government. The affidavit only places the factual position on record. The first respondent has no say in the matter of pensionary benefits as admissible to the petitioner for the services rendered by him with the Government of Maharashtra.

18. As far as the State Government is concerned, an affidavit is filed by Mr. Hiralal Ramdas Suryavanshi, Joint Secretary– Medical Education and Drugs Department, Government of Maharashtra and in paras 4 and 5 of this affidavit at page 92 of the paper book, the deponent states as under:-

> "4. At the further outset, I say and submit that the Petitioner having exercised his option by tendering his resignation from the services of Respondent No. 1, looses his right to pensionary benefits in terms of Government Resolution NO. PEN 1067/49/67-X dated 17-10-1967 issued by the Finance Dept. Govt. of Maharashtra, clause

(vi) of the said GR reads as "**Cases of resignation from a public undertaking will for the purpose of these orders be treated as resignation from the Government service, entailing forfeiture of the earlier service under the Government and loss of the pensionary benefits under these orders**". Hereto annexed and marked as **Exhibit A** is the copy of the G. R. dated 17-10-1067. In this regard, reliance is placed on the judgment of the Hon'ble Apex Court in the matter of Union of India vs. Rakesh Kumar reported in **(2001) 4 SCC 309**, in para 16, clauses 'c' and 'd' reads as "**However, this has nothing to do with quitting of service after tendering resignation. It is also to be stated that Rule 26 of the CCS (Pension) Rules specifically provides that resignation of a service or post entails forfeiture of past service unless resignation is submitted to take up, with proper permission, another appointment under the Government where service qualifies. Hence on the basis of Rule 49 a Member of BSF who has resigned from his post after completing more than 10 years of qualifying service but less than 20 years would not be eligible to get pensionary benefits. There is no provision in CCS (Pension) Rules giving such benefits to such government servants**". I say that even Rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982 provides that upon resignation the employee forfeits his past service.

5. I further say and submit that Respondent No. 2 vide its letter dated 3-12-2009 referred the pensionary benefit issue of the petitioner to the Office of the Principal Accountant General (Accounts & Entitlements)–I Maharashtra for authorizing the restoration of pension to the Petitioner. The Principal Accountant General (Accounts & Entitlements) vide its letter dated 30-3-2010 with a copy marked to the petitioner, categorically stated that as per GR No. PEN 1067/49/76 dated 17-10-1967 such resigned person is not entitled to get restoration of pension or capitalized value of pension. Hereto annexed and marked as **Exhibit B** is the copy of the said letter."

19. It is on the above materials that we have heard Mr. Dubey appearing for the petitioner, Ms. Patankar appearing for respondent no. 1 and Mr. Patki, learned Additional Government

Pleader appearing for respondent no. 2. At the outset, Mr. Dubey states that the petitioner does not wish to file any rejoinder affidavit and would proceed on the basis of denials. Meaning thereby, we should hold that the petitioner has denied the contents of the affidavits in reply.

20. Mr. Dubey submits that the issue before us is covered by the Division Bench judgment of this court. Mr. Dubey would submit that no interpretation other than the one placed by the Division Bench is possible. The authorities have failed to appreciate that the petitioner was in employment of the erstwhile Haffkine Institute, which was an undertaking of the Government of Maharashtra. He was in service for 10 years, 2 months and 26 days. It is this institute which was thereafter bifurcated by the State in two autonomous bodies. The petitioner may have been transferred to the corporation with effect from 1st September, 1975 and completed 9 years, 9 months and 28 days service, after which, he resigned on 28th June, 1985. Looked at from any angle, the petitioner has completed 10 years' qualifying service. That is why the petitioner was qualified to obtain pension. The pensionary benefits have wrongfully been denied. The authorities did not understand the nature of the dispute and controversy. The petitioner did not resign from the services of the Government

of Maharashtra, but from that of the corporation. Hence, the Government Resolution dated 17th October, 1967 is not applicable to the petitioner's case. Therefore, Mr. Dubey would submit that the authorities have misdirected themselves in law. They have not applied the correct legal principles. Their act of denying the petitioner the pensionary benefits, thus, contravenes the law. That act is also wholly arbitrary, unreasonable, unfair and unjust. The same violates the mandates of Articles 14 and 16(1) of the Constitution of India.

21. On the other hand, Ms. Patankar learned counsel appearing for respondent no. 1 relies upon the affidavit in reply of the corporation to submit that the corporation is not in a adversary position. It was keen to assist the petitioner. However, it is the second respondent State, which is contesting the claim and resisted it throughout. Therefore, this court should not issue any writ against the first respondent.

22. Mr. Patki learned counsel appearing for respondent no. 2 State, however, would submit that the controversy has not been understood in its proper perspective by the petitioner. The petitioner has exercised an option of tendering his resignation from the services of the first respondent. He loses his right in respect of the pensionary benefits in terms of the Government

Resolution dated 17th October, 1967 relied upon by the State. Mr.Patki, therefore, submits that the position is correctly enumerated in paras 4 and 5 of the affidavit in reply. Therefore, the writ petition deserves to be dismissed.

23. First of all we wish to clear the ground by referring to the issue raised in Writ Petition No. 515 of 2001 decided by this court on 4th October, 2006. That was a petition filed by the ex-employees of Haffkine Bio-pharmaceuticals Corporation and Haffkine Institute of Teaching, Research and Training. The prayer in the petition was that the State of Maharashtra be directed to grant pension and pensionary benefits to them with effect from 1st September, 1975 with interest and also under the Government Resolution dated 26th May, 1997. The case of the petitioners in that petition was that they were in the service of the erstwhile Haffkine Institute. They worked for a period of more than 10 years on 1st September, 1975, which is the date of bifurcation of the State Institute into a institute and a corporation. The respective petitioners undisputedly completed this service. Once the notification dated 26th November, 1973 converts the erstwhile institute into two autonomous bodies, namely, Haffkine Bio-Pharmaceutical Corporation and Haffkine Institute of Teaching, Research and Training, the Government

Resolution dated 30th April, 1975 in that behalf was relied upon by the Division Bench, particularly a clause therein, namely clause (4). After reproducing it in para 3 and referring to the said resolution in para 4 and setting out clause (5), Appendix 'A' to that circular, the Division Bench referred to the State's policy and stand. The Division Bench, after referring to the same in great details concluded that based on the Government Resolutions dated 1st September, 1975, 28th April, 1981 and even as per Rule 167(4) of the Maharashtra Civil Services (Pension) Rules, 1982, the petitioners are entitled to claim pension and pensionary benefits. Then, the Government Resolution No. 1097 of 2012 dated 26th May, 1997 was referred in para 10 as also the order passed by this court in Writ Petition No. 1217 of 2003. This court directed to make payment after considering the respective cases of the petitioners within six months.

24. In the present case, the argument and the controversy is somewhat distinct. The petitioner sought pension from the State although upon the bifurcation he worked with the first respondent corporation and resigned from its services. The petitioner's claim for pension is in respect of the employment with the Government of Maharashtra for a period prior to the formation of the corporation and opting for employment in it.

That is how the claim for pension was made over by the first respondent corporation to the State. The State Government has, after detailed correspondence, pointed out that the petitioner has resigned after absorption. That is how as per the government Resolution dated 17th October, 1967, such resigned person is not entitled to get restoration of pension or capitalized value of pension.

25. It is this aspect which is highlighted before us. Hence, the petitioner cannot derive any assistance from the Division Bench judgment of this court.

26. In dealing with the present controversy, we would have to refer to the stand of the Government in further details. On 7th October, 2010, the office of the Principal Accountant General (A & E) – I, Maharashtra informed the Section Officer of the Medical Education and Drugs Department, Mantralaya that para (vi) of the Government Resolution dated 17th October, 1967 would apply. Therein, it is stated that cases of resignation from a public undertaking, for the purpose of pension, be treated as resignation from Government Service. That entails in forfeiture of the earlier service under the Government and loss of pensionary benefits. As far as the petitioner is concerned, his case is falling within this para and therefore, he is not entitled to pension. This

Government Resolution is throughout relied upon and pages 53 and 54 of the paper book are evidence of the same. This Government Resolution, copy of which is at page 57-A of the paper book reads as under:-

"Permanent transfer of Government servants to Government Companies/ Corporation – Grant of retirement benefits-

GOVERNMENT OF MAHARASHTRA.
Finance Department.
Resolution No. PEN/1067/49/67-X.
Sachivalaya, Bombay-32 (BR),
dated the 17th October, 1967.

RESOLUTION

The retirement benefits granted in terms of Government Resolution, Finance Department No.PEN.1060/5888-X dated the 22nd March, 1961 to a Government servant who is permanently absorbed in a public sector undertaking have been reviewed and Government is pleased to sanction the following revised terms in respect of those absorbed hereafter:-

(i) A permanent government servant on absorption in a public undertaking will be eligible for pro rata pension and death-cum-retirement gratuity based on the length of his qualifying service under Government till the date of absorption. The pension will be calculated on the basis of pensionable pay for three years preceding the date of absorption and the death-cum-retirement gratuity on the basis of the pay immediately before absorption.

In cases where a government servant at the time of absorption has less than 10 years service and is not entitled to pension, the question of proportionate pension will not arise, he will only be eligible to proportionate service gratuity in lieu of pension and to death-cum-retirement gratuity based on length of service.

(ii) The amounts of pension/gratuity and the death-cum-retirement gratuity would be currently worked out and will be intimated to the government servant as well as to the undertaking as and when the government servant is absorbed.

(iii) The pro rata pension, gratuity etc. admissible in respect of the service rendered under Government would be disbursable only from date the Government servant would have normally superannuated had he continued in Government service.

(iv) Every government servant will exercise an option, within six months of his absorption, for either of the alternatives indicated below;

(a) Receiving the monthly pension and death-cum-retirement gratuity already worked out, under the usual Government arrangements.

(b) Receiving the gratuity and a lump sum amount in lieu of pension worked out with reference to commutation tables obtaining on the date of superannuation.

Where no option is exercised within the prescribed period the government servant will automatically be governed by alternative (b) above. Option once exercised shall be final. The option shall be exercised in writing and communicated by the government servant concerned to the undertaking.

(v) Where the government servant retires from the service of a public undertaking before his date of superannuation, the proportionate pension and death-cum-retirement gratuity will not be paid to him till such time as he actually attains the age of superannuation. This will be the case irrespective of the option exercised by him.

(vi) Cases of resignation from a public undertaking will for the purpose of these orders be treated as resignation from Government service, entailing forfeiture of the earlier service under Government and loss of the pensionary benefits under these orders.

(vii) For the period of service rendered in a public undertaking the absorbed government servants will be entitled to all the benefits admissible to other corresponding employees of the organisation.

(viii) The total gratuity admissible in respect of the service rendered under the Government and under the public undertaking should not exceed the amount that would have been admissible had the government servant continued in Government service and retired on the same pay which he drew on retirement from the public undertaking.

(ix) Government would have no liability for family pension in such cases.

(x) Any further liberalisation of pension rules decided upon by Government after the permanent absorption of a Government servant in a public undertaking would not be extended to him.

(xi) In cases where the Government servant has opted to receive pension as at (iv) (a) above but wishes to commute a portion of the pension, such commutation will be regulated in accordance with the Government rules in force at the time of his superannuation.

2. The above decisions will apply only where the permanent transfer from Government service to a public undertaking is in the public interest. In all other cases, Government will not accept liability to pay any retirement benefits for the period of service rendered by the government servant before his transfer, and such cases should continue to be regulated according to the orders issued, in Government Circular, Political and Services Department No. SRV 2254, dated the 10th February, 1955.

By order and in the name of the Governor of Maharashtra.

N. V. SUPE,

Union Secretary to Government."

27. A bare perusal of this Government Resolution will clarify that the grant of retirement benefits, on permanent transfers of Government servant to Government companies or corporations

was its subject. The retirement benefits, in terms of Government Resolution dated 22nd March, 1961 to a Government servant, who is permanently absorbed in a public sector undertaking have been reviewed and the Government was pleased to sanction the revised scheme/terms in respect of these absorbed employees. Clause (i) of this Government Resolution says that a permanent Government servant, on absorption in a public undertaking, will be eligible for pro-rata pension and death-cum-retirement gratuity based on the length of his qualifying service under Government till the date of absorption. The pension will be calculated on the basis of pensionable pay for three years preceding the date of absorption and the death-cum-retirement gratuity on the basis of the pay immediately before absorption. By clause (ii), the amount of pension, gratuity and the death-cum-retirement gratuity would be worked out and will be intimated to the Government servant as well as the undertaking as and when the Government servant is absorbed. The pro rata pension, gratuity etc. admissible in respect of the Government servant would be disbursed only when the Government servant would have normally superannuated had he continued in Government service is what is set out in clause (iii). By clause (iv), every Government servant was to exercise an option in terms of this clause and this clause then clarifies that if no option is exercised within the prescribed period, the Government servant will be automatically governed by alternative sub-clause (b) of clause (iv). By clause (v), the case of a Government servant retiring from the service of public undertaking before the date of superannuation is dealt with. Then comes clause (vi), which is dealing with cases of resignation from a public undertaking. That resignation will, for the purpose of these orders, meaning the Government Resolution, be treated as resignation from Government service entailing forfeiture of the service under the Government and loss of the pensionary benefits under these orders. Thus, this Government Resolution deals with those Government servants who are permanently transferred from government service to a public undertaking. Since the decisions taken and incorporated in this Government Resolution are in the public interest and the Government accepted the liability to pay retirement benefits even after such absorption that the conditions are imposed. In all other cases, the Government has not accepted the liability to pay any retirement benefits for the period of service rendered by the Government servant before his transfer and his case should deemed to be regulated according to the orders issued in a Government Circular dated 10th February, 1955. Thus, a Government servant, who is permanently absorbed in a public sector undertaking would be entitled to the pension and death-cum-retirement-gratuity. The scheme for this entitlement is worked out in this Government Resolution. The understanding of the Government, therefore, is that an employee, who has resigned, is not entitled to restoration of pension or capitalized value of pension. To our mind, no fault can be found with this stand of the Government. We do not think that it is perverse or vitiated by any error of law apparent on the face of the record. Even in terms of Rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982, the cases of forfeiture of service on resignation are dealt with. Sub-rule (1) of Rule 46 clearly says that resignation from a service or a post entails forfeiture of past services.

28. To our mind, therefore, the judgment of the Division Bench of this court is of no assistance in resolving the controversy. Similarly, the reliance placed by Mr. Dubey on several judgments of this court is misplaced.

29. He firstly relied upon a Division Bench judgment of this court in the case of *Shaila D. Varerkar vs. State of Maharashtra*[1]. There, denial of pensionary benefits to the petitioner was impugned. The petitioner was employed on a non-teaching post (Librarian) in a college. She retired on 7th January, 1987. By a

1 **1999 (2) Mh. L. J. 529**

circular issued by the Government on 16th November, 1996, provisions of Maharashtra Civil Services (Pension) Rules, 1982 were made applicable to persons working in Government recognized and aided non-governmental Art Educational Institutes. The same was made effective from 1st April, 1995. The second respondent college was covered under the said circular. The petitioner, accordingly, by diverse letters, communicated with the college and claimed the benefits arising out of the pension scheme, which was made applicable to the second respondent college. These were denied on the ground that the pensionary benefits were available from 1st April, 1995. The petitioner, who retired earlier, namely, on 7th January, 1987 is, therefore, not entitled to the same. Such an issue is completely different than the one before us. The issue before the Division Bench was rightly held to be concluded by several Division Bench orders and which, in turn, relied upon the judgment of the Hon'ble Supreme Court of India in the case of *D. S. Nakara and Ors. vs. Union of India and Ors. AIR 1983 SC 130*[2]. This judgment is therefore, of no assistance to the petitioner.

30. Then, Mr. Dubey relied upon a Supreme Court judgment in the case of *Sheelkumar Jain vs. New India Assurance Company*

2 **AIR 1983 SC 130**

Limited and Ors.[3]. There, the appellant retired after completing 20 years qualifying service. He served a three months notice in 1991 under a scheme then in force of his intention to resign from his post. That resignation was accepted. Para 5 of this 1976 scheme required giving three months' notice of intention to "leave or discontinue" the service and it neither stated that termination of service pursuant to the notice would amount to "resignation" or "voluntary retirement" nor required acceptance of the notice by the competent authority. After coming into force of the 1995 Scheme, which is known as the General Insurance (Employees) Pension Scheme, 1995, the appellant before the Hon'ble Supreme Court sought pension. However, his claim for pensionary benefits was rejected by the Assurance Company/employer on the ground that the 1995 Scheme would not be applicable to those, who resigned from service, in view of para 22 thereof, which provided that resignation shall entail forfeiture of past services.

31. It is in these circumstances that the Hon'ble Supreme Court granted the request of the appellant and set aside the judgment of the Division Bench of Madhya Pradesh High Court. The Hon'ble Supreme Court held that the appellant having completed 20 years qualifying service, having given three months' notice of his

3 **(2011) 12 SCC 197**

intention to leave the service, the competent authority having accepted the notice and relieved him from service, para 30 of the 1995 Scheme would apply though in the notice he has used the word "resign". That is because it was a voluntary retirement and which, unlike resignation, does not entail in forfeiture of past services. The appellant may have said that he intends to resign, but wording of para 5 of the 1976 Scheme, which was invoked, requires giving three months' notice of intention to leave or discontinue from the service. It neither stated that termination of service pursuant to the notice would amount to resignation or voluntary retirement nor requires acceptance of the notice by the competent authority. That is why the 1995 Scheme and paras 22 and 30 thereof cannot be construed to deprive the appellant of the pensionary benefits. Mr. Dubey's reliance upon this judgment, de-hors the peculiar position of that employee, is entirely misplaced. Paras 3, 4 and 5 set out the factual position. The Hon'ble Supreme Court then analyses the whole scheme and concludes in para 23 as under:-

> "23. The 1995 Pension Scheme was framed and notified only in 1995 and yet the 1995 Pension Scheme was made applicable also to employees who had left the services of Respondent 1 Company before 1995. Paras 22 and 30 of the 1995 Pension Scheme quoted above were not in existence when the appellant submitted his letter dated 16-9-1991 to the General manager of Respondent 1

> Company. Hence, when the appellant served his letter dated 16-9-1991 to the General manager of Respondent 1 Company, he had no knowledge of the difference between "resignation" under Para 22 and "voluntary retirement" under Para 30 of the 1995 Pension Scheme. Similarly, Respondent 1 Company employer had no knowledge of the difference between "resignation" and "voluntary retirement" under Paras 22 and 30 of the 1995 Pension Scheme, respectively."

32. Mr. Dubey relies upon this paragraph by reading it in isolation. He does not read it in the context or the peculiar factual position and emerging from the record of that case. That is why we hold that even this judgment is of no assistance.

33. Finally, the judgment of a Division Bench of this court in the case of *State of Maharashtra and Ors. vs. Ravindranath Kautik Mohite*[4] is also of no assistance. There, the pensionary benefits were denied though the Government Resolution dated 4th April, 1983 was clear. That was a case of the employee working in a distinct department and then retiring from Government service by serving another department of the State. Whether the department earlier served and the service therein can be counted so as to compute the qualifying service required for pension was thus the issue. The denial of pensionary benefits was on the ground that the employee worked in the Agricultural and Co-

4 **2016(6) Mh. L. J. 440**

operation Department and in the Directorate of Small Savings. All services rendered and computed together do not satisfy the requirement of qualifying service. That is not an issue before us. We do not think even this judgment is of any assistance.

34. As a result of the above discussion, the writ petition fails. Rule is discharged. It is dismissed, but without any order as to costs.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**