

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION STAMP NO. 30490 OF 2018

1. Dr.Suhas Digambar Herlekar
Age : 60 years, Occupation : Retired
R/O, 6, Suvarnamayisociety
Ramkrishan Parmahans Nagar
Lane No. 14, Paud Road, Pune

2. Dr. Dinesh Gajanan Kamat
Age : 57, Occupation : Retired
R/O : Kayakalpmadhuban colony
100 feet road, Sangli.

3. Dr.Anjali Dinesh Kamat
Age : 56, Occupation: Retired
R/O: Kayakalpmadhuban colony
100 feet road, Sangli.

4. Dr.Shrimati Gadadhar Agnihotri
Age : 69, Occupation Retired
R/o. Flat No.5, Mugha Apartment
39/2 Railway line, Solapur.

5. Dr.Nilima Ajay Ghangale
Age : 59 years, Occupation: Retired
R/o. B/11, Sakhal Plaza Bhelke Nagar
Near BSNL Telephone Exchange,
Kothrud, Pune – 411 038.

.. Petitioners

Vs.

1. State of Maharashtra
Through the Principal Secretary,
Medical Education and Drugs Dept.

Mantralaya, Mumbai 400 032.

2. State of Maharashtra
Through the Principal Secretary,
Education and Employment Dept.
Mantralaya, Mumbai 400 032.

3. The Directorate of Ayush
Through its Director of Ayurveda
Government Dental College & Hospital
Building, 4th Floor St. Georges Hospital
Compound, Fort, Mumbai 400 001.

4. Vasantdada Patil Ayurved Medical College
& Institute of Yoga, Sangli.
Sangli – Miraj Road, Neminathnagar,
Vishrambag, Sangli,
Maharashtra 416416.

5. Asthang Ayurved Mahavidyala, Pune
2062, Opposite N M V Girls High School,
Paranjape Chowk, Sadashiv Peth, Pune,
Maharashtra 411030.

6. Seth Govindji Raoji Ayurveda Mahavidyalaya
21/A/B 13 Budhwarpeth Samrath Chowk,
Solapur, Maharashtra 413002

7. Radhkisan Toshniwal Ayurved Mahavidyalay
Kediya Plots, Jatharpeth Road, Akola,
Maharashtra 444005.

.. Respondents

Mr.Sunip Sen a/w Mr.Prabhakar M. Jadhav, for the Petitioners.
Ms.S.D.Vyas, 'B' Panel Counsel for State.

**CORAM : S.C.DHARMADHIKARI &
M.S.KARNIK, JJ.**

**RESERVED ON : 22nd JANUARY, 2019
PRONOUNCED ON : 28 FEBRUARY, 2019**

JUDGMENT (PER M.S.KARNIK, J.) :

. Heard

2. Rule. The respondents waive service. By consent, Rule made returnable forthwith and heard finally.

3. By this Petition filed under Article 226 of the Constitution of India, the petitioners seek quashment of the order dated 22/06/2018 denying them pension and further declaration that the petitioner - employees of Ayurvedic, Unani and homeopathic aided educational institutions opting for voluntary retirement/resignation, after completing qualifying service period, are entitled to pension and gratuity benefits.

The brief facts of the case are as under :

4. The petitioners are appointed on various dates with the respondent Nos. 4 to 7 – Colleges. The details of their appointment and length of services are mentioned in the chart which is at page 6 of the Petition Memo. All the petitioners have admittedly completed more than 20 years of service. It is the petitioners's case that they voluntarily retired from service of their respective Colleges by giving letters in the form of resignation. According to the petitioners, they have opted for voluntary retirement from service. Their letters are to be read as for voluntary retirement, though it is in the form of resignation. Respondent Nos. 4 to 7 have accepted the letters for voluntary retirement as per the procedure for voluntary retirement. The petitioners have completed the minimum qualifying service of 20 years to be eligible for pension under Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'the Rules' for short) for grant of pension and gratuity benefits.

5. It is the petitioner's case that by G.R. dated

21/07/1983, pension, gratuity and other retiral benefits admissible to the State Government servants under the Rules, including family pension contained therein, were made applicable to full-time teaching and non-teaching staff in recognized aided non-government Arts, Science and Commerce and education Colleges. The G.R. was also made applicable to the staff of non-agricultural Universities in the State who retired on or after 01/10/1982. It is further stated in the Petition that the G.R. did not differentiate between employees who retire after reaching the specified age of superannuation and those who opted for voluntary retirement before the date of their retirement on superannuation. The petitioners say that further by G.R. dated 07/03/1990, it is clarified that even employees who opted for voluntary retirement will be eligible under the G.R. dated 21/07/1983 for pensionary benefits and gratuity.

6. Learned Counsel for the petitioners submits that by giving letters in the form of resignation, the petitioners have in effect voluntarily retired from service. In the submission of the

learned Counsel for the petitioners, no distinction can be made between 'resignation' and 'voluntary retirement' from service. According to the learned Counsel, respondent Nos. 4 to 7 have accepted the voluntary retirement as per the procedure prescribed for voluntary retirement, therefore, the resignation letters are, in fact, nothing but the applications for voluntary retirement.

7. Learned Counsel placed reliance on the decision of the Nagpur Bench of this Court dated 10/06/2013 in Writ Petition No. 5771 of 2011 which held that non-extension of benefits of pension and gratuity scheme to teaching and non-teaching employees, as also, the hospitals of non-government aided Ayurvedic and Unani Colleges affiliated to the University of Pune and University of Nagpur, to be violative of Articles 14 and 16 of the Constitution of India. Our attention is invited to the relevant findings of this Court which held that the staff of the Colleges (Ayurvedic and Social Work Colleges) is entitled to pension and gratuity in terms of G.R. dated 21/07/1983 and

that employees appointed on or before 31/10/2005 would be entitled to the said benefits of pension and gratuity. Learned Counsel would therefore submit that the issue as regards the staff (teaching and non-teaching) of Ayurvedic Colleges to be treated at par with the other Colleges is now concluded.

8. Learned Counsel would contend that though the petitioners had made individual representations to the respondent No.1 informing it that they have completed more than 20 years of service in the named Ayurvedic Colleges, entitling them to pension and gratuity in view of G.R. dated 21/07/1983, the respondents failed to take any decision thereon. Pursuant to the directions issued by this Court in Writ Petition No. 4343 of 2017 to decide the representations, respondent No.3 informed the petitioners the reasons for not granting pension and gratuity benefits. The reasons stated are that there exist no provisions in the 'Rules' for grant of retirement benefits to the employees who have resigned and also that there is no provision for voluntary retirement for

employees of government aided Ayurvedic and Unani Institutions in the Rules. It is therefore stated that pension and gratuity benefits provided for in G.R. dated 10/08/2016 will not apply to the petitioners. This according to the learned Counsel is absolutely an untenable reason. According to the learned Counsel it is now well settled that the petitioners and persons similarly situated are to be treated at par with all other similarly placed Colleges.

9. Learned Counsel would submit that voluntary retirement as well as pension for persons opting to retire voluntarily after completing 20 years of service is covered by Rule 66 of the said Rules and therefore, the petitioners being at par with the other similarly placed employees, are entitled to these benefits.

10. Learned Counsel for the petitioners has relied upon the following decisions of the Apex Court in support of his case.

- i) Ghanshyam Dass Relhan Vs. State of Haryana and ors. (2009) 14 Supreme Court Cases 506.
- ii) Asger Ibrahim Amin Vs. Life Insurance Corporation of India (2016) 13 Supreme Court Cases 797.
- iii) Shashikala Devi Vs. Central Bank of India and ors. (2014) 16 Supreme Court Cases 260.
- iv) Sheelkumar Jain Vs. New India Assurance Co. Ltd and ors. (2011) 12 Supreme Court Cases 197.
- v) UCO Bank and ors. Vs. Sanwar Mal (2004) 4 Supreme Court Cases 412.
- vi) Union of India and ors. Vs. Lt.Col.P.S.Bhargava (1997) 2 Supreme Court Cases 28.
- vii) Union of India and ors. Vs. Braj Nandan Singh (2005) 8 Supreme Court Cases 325.
- viii) M.R.Prabhakar and ors.Vs. Canara Bank and ors. (2012) 9 Supreme Court Cases 671.

11. Learned Counsel relying on decisions of the Apex Court would contend that the State being a model employer,

should construe the provisions of beneficial legislation in a way that extends benefit to its employees. He would submit that termination of the services of the petitioners, in essence, was voluntary retirement within the meaning of Maharashtra Civil Services Rules and the petitioners ought not to be deprived of the pensionary benefits merely because they styled their voluntary retirement from service as 'resignation'. Learned Counsel would thus submit that the resignation is nothing but a voluntary retirement from service and therefore, the petitioners's case is squarely governed by Rule 66 of the said Rules entitling the petitioners to pension and gratuity.

12. Per contra, learned AGP would contend that the petitioners having resigned from service, question of treating resignation as voluntary retirement does not arise. In her submission, there is conceptual distinction between 'resignation' and 'voluntary retirement'. Relying on Rule 46(1) of the said Rules, learned AGP would submit that resignation from a service or a post entails forfeiture of past service. In her submission, the

language employed in Rules 46 and 66 of the said Rules is very clear and unambiguous. She submits that the petitioners having resigned from service, there is no question of treating resignation as voluntary retirement, as these are two conceptually different concepts as Rules 46 and 66 of the Rules would indicate.

13. Heard learned Counsel for the parties. We have perused the Petition and relevant annexures annexed to the Petition. We have also gone through the decisions of the Apex Court relied by learned Counsel for the petitioners.

14. The question that arises for consideration in this Petition is whether the letters of resignation tendered by the petitioners after completing more than 20 years of service can be treated as applications for voluntary retirement within the meaning of Rule 66 of the said Rules. There is no dispute that the petitioners have rendered service of more than 20 years as part of teaching staff of respondent Nos.4 to 7 – Ayurvedic

Colleges. Even there is no disputing the position that as per the **decision of Nagpur Bench of this Court dated 10/06/2013 in Vidarbha Ayurvedic Mahavidyalaya Vs. State of Maharashtra in Writ Petition No. 5771 of 2011 and other companion Writ Petitions**, the pension cum gratuity scheme is extended to the teaching staff of Ayurvedic and Unani Colleges in terms of G.R. dated 21/07/1983. In the facts of the present case, the question of applying the decision of this Court in **Vidarbha Ayurvedic Mahavidyalaya** (*supra*) will arise only if the petitioners succeed in establishing that the letters of resignation tendered by them were, in fact, applications for voluntary retirement as per Rule 66 of the said Rules.

15. It would be necessary for us to first examine the documents available on record in the nature of letters of acceptance of resignation. Insofar as the petitioner No.1 is concerned, his resignation dated 07/06/2014 is accepted with effect from 01/08/2014. Petitioner No.1 was relieved with effect from 31/07/2014 after office hours.

16. Insofar as acceptance of resignation of petitioner No.2 is concerned, which is at page 26 of the paper-book, it shows that he tendered his resignation on 12/11/2009. It further mentions that after the resignation is placed before Local Management Committee, the decision on the resignation would be informed. It is also mentioned that the charge of the post be handed over to the Head of the Department. Subject to the Local Management Committee accepting the resignation, the petitioner No.2 is relieved with effect from 12/11/2009. It would thus be seen that having tendered the resignation, the petitioner No.2 was relieved forthwith on the date of tender of the resignation itself.

17. Insofar as the petitioner No.3 is concerned, in the communication dated 06/10/2008, it is mentioned that the petitioner has resigned by giving one month's notice. This communication reveals that subject to the Local Management Committee accepting the resignation, the petitioner No.3 is relieved with effect from 03/10/2008 after office hours. As

regards petitioner No.4, her resignation dated 21/05/2003 is accepted from the afternoon of 21/05/2003. Insofar as petitioner No. 5 is concerned, she resigned on 29/09/2007. Her resignation is accepted on 01/10/2007 by the Management Committee and she is relieved from the afternoon of 01/10/2007.

18. The petitioners after tendering their resignations stood relieved of the charge of the post held by them. Not only this but the petitioners voluntarily handed over the charge of their posts. Even the petitioners do not dispute they resigned, however, pray that their resignations be treated as voluntary retirement. Some of the petitioners gave one months' notice before resigning. However, insofar as the petitioners No. 4 and 5 are concerned, no notice stipulating such period before resigning appears to have been given.

19. The petitioners are governed by Maharashtra Civil Services (Pension) Rules 1982. Rule 6(1) provides that any

claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a government servant retires or is retired or is discharged or dies, as the case may be.

Sub-Rule 2 of Rule 6 reads thus:

“ The date on which a Government servant retires or is retired or is discharged or is allowed to resign from service, as the case may be, shall be treated as his last working day. The date of death shall also be treated as working day:

Provided that in the case of a Government servant who is retired prematurely or who retires voluntarily under sub-rule (4) and (5) of the rule 10*[or sub-rule (1) of rule 65 of rule 66], as the case may be, the date of retirement shall be treated as a non-working day.”

20. A reading of Sub-Rule (2) of Rule 6 indicates that the date on which the concerned retires or is retired or is discharged or is allowed to resign from service, as the case may be, that date shall be treated as his last working day. However, insofar as a government servant who is retired prematurely or who retires voluntarily under Sub-Rule (4) and (5) of Rule 10 of Sub-Rule 1 of Rule 65 or Rule 66, as the case may be, the date of retirement shall be treated as a non working day. Rule

6 of the said Rules is in indicator that even as regards last working day, a distinction is made between 'resignation' and 'voluntary retirement' .

21. Chapter V of the said Rules deals with qualifying service of a government servant for the purpose of pension and other retiral benefits. Rule 46 deals with forfeiture of past service on resignation. Sub-Rule (1) of Rule 46 provides that resignation from a service or a post entails forfeiture of past service. It would also be material to consider the other clauses of Rule 46 which read thus :

“ (2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent under the Government where service qualifies.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(4) the appointing authority may consider the request of a person who had earlier resigned his post under Government, to take him back in service in the public interest on the following conditions namely :--

(a) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for

withdrawal of the resignation has been made as a result of a material change in the circumstance which originally compelled him to tender the resignation.

(b) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;

(c) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;

(d) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.

(5) Request for taking him back in service shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a person to be taken him back in service and to resume duty the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.”

22. Reading of the said clauses indicates that except as otherwise provided in the said clauses, resignation from a service or a post entails forfeiture of past service.

23. Chapter VII provides for classes of pensions and conditions governing their grant. Rule 65 thereunder deals with retirement on completion of 30 year's qualifying service.

We are concerned with the Rule 66 in the present case. It would be material to reproduce Rule 66 which reads thus:

“66. Retirement on completion of 20 years qualifying service.--

(1) At any time after a Government servant has completed twenty years qualifying service, he may, by giving notice of three months in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under sub-rule (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) [***]

Provided that the total qualifying service after allowing the increase under this sub-rule shall not exceed the qualifying service which the Government servant would have had, if he had retired voluntarily at the lowest age limit for voluntary retirement prescribed under sub-rule (5) of Rule 10.

(4) (a) [A government servant referred to in sub-rule (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 a request under Clause (a), the appointing authority subject to the provisions of sub-rule (2), may 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, with the concurrence of the Finance Department, may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(5) A Government servant, who has elected to retire under this rule and has given the 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 withdrawal shall be made before the intended date of his retirement.

(6) The pension and [retirement gratuity] of the Government servant retiring under this rule shall be based on the pay as defined under Rules 60 and 61 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

(7) This rule shall not apply to a Government servant who--

- (a) retires when he is declared surplus,
- (b) retires from Government service for being absorbed permanently in an Autonomous Body or a Public Sector Undertaking to which he is on deputation at the time of seeking voluntary retirement.

Explanation-- for the purpose of this rule the expression “appointing authority” shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement”.

24. A reading of clause (1) of Rule 66 indicates that at any time after a government servant has completed 20 years of qualifying service, he may, by giving notice of three months in writing to the appointing authority, retire from service. Clause (2) of Rule 66 states that the notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority. Clause (2) further provides 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.

25. Clause (4) (a) of Rule 66 deals with a situation where a request is made by a government servant to accept notice of voluntary retirement of less than three months giving reasons therefor. Clause (4)(b) of Rule 66 is a power conferred on the appointing authority to relax the requirement of notice of three months and this is also on the condition that the government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

26. A reading of clause (5) of Rule 66 would indicate the consequences of electing to retire under Rule 66, in the sense that, once the necessary notice to that effect is given, a government servant shall be precluded from withdrawing his notice except with the specific approval of such authority. Thus, for withdrawal of notice, specific approval of such authority is

necessary. Even such request for withdrawal has to be made before the intended date of retirement.

Sub-clause (7) of Rule 66 provides the categories of those government servants to whom Rule 66 will not apply.

It would thus be clear that Rule 66 provides for an elaborate procedure as regards how an application for voluntary retirement on completion of 20 years qualifying service is to be made and how the same is to take effect.

27. As indicated earlier, the petitioners tendered their resignation. The consequences of resignation is provided by Rule 46 i.e. forfeiture of past service. We have already noticed that in case of the petitioners No. 4 and 5, resignation was accepted on the same day on which it was tendered. Immediately on being relieved, the petitioners voluntarily handed over the charge. It is not as if the petitioners were forced to resign on account of illness or their incapacitation

which prevented them from discharging their duties leaving them no option but, to resign.

28. In our opinion, the language of Rule 66 is very clear and leaves no manner of doubt that for a voluntary retirement to take effect, the procedure laid down in Rule 66 has to be followed. Moreover, voluntary retirement becomes effective from the date of expiry of notice period of three months, unless on a request made in writing to the appointing authority, which decides to accept notice of voluntary retirement of less than three months giving reasons therefor, in which case the period can be curtailed.

29. As per clause (2) of Rule 66, the notice of voluntary retirement requires acceptance by the appointing authority and the appointing authority can refuse to grant permission as per proviso to clause (2) of Rule 66. It is only when 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. From the materials on record, it is apparent that the intention of the petitioners was to resign from service. It is not as if the petitioners have given notice of three months and made a request in writing to the appointing authority to accept the resignation before expiry of three months giving reasons therefor. For that would have enabled us to juxtapose Rule 66 with the facts of the present case to come to a conclusion that the essential components of Rule 66 stand substantially fulfilled. As can be seen from the narration, none of the essential components of Rule 66 are fulfilled or substantially fulfilled, for even then it may have been possible for us to consider the 'resignation' as 'voluntary retirement' in view of the law laid down by the Apex Court in the case of **Asger Ibrahim Amin** (*supra*). In this view of the matter, we are unable to persuade ourselves to accept the submission of the learned Counsel for the petitioners that the present case is squarely covered by the decision of the Apex Court in the case of **Asger Ibrahim Amin** (*supra*).

30. A useful reference can be made to the decision of the Apex Court in the case of **Union of India and ors. Vs. Braj Nandan Singh (2005) 8 Supreme Court Cases 325** (*supra*). The Apex Court was dealing with Rule 26 of the Central Civil Services (Pension) Rules, 1972. Paragraphs 5 to 11 of the said decision of the Apex Court read thus:

"5. In order to appreciate rival submissions Rule 26 which is the pivotal provision needs to be quoted. The same reads as under:

"26. Forfeiture of service on resignation-- (1) Resignation from a service or post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies."

Rule 26 as the heading itself shows relates to forfeiture of service on resignation. In clear terms it provides that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service. The language is couched in mandatory terms. However, sub- rule (2) is in the nature of an exception. It provides that resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. Admittedly this is not the case in the present appeal. Rule 5 on which great emphasis was laid down by the learned counsel for the respondent deals with regulation of claims to pension or family pension. Qualifying service is dealt with in Chapter III. The conditions subject to which service qualifies are provided in Rule 14. Chapter V deals with classes of pensions and conditions governing their grant. The effect of Rule 26 sub-rules (1) and (2) cannot be lost sight of while deciding the question of entitlement of pension. The High Court was not justified in its conclusion

that the rule was being torn out of context. After the past service is forfeited the same has to be excluded from the period of qualifying service. The language of Rule 26 sub-rules (1) and (2) is very clear and unambiguous. It is trite law that all the provisions of a statute have to be read together and no particular provision should be treated as superfluous. That being the position after the acceptance of resignation, in terms of Rule 26 sub-rule (1) the past service stands forfeited. That being so, it has to be held that for the purpose of deciding question of entitlement to pension the respondent did not have the qualifying period of service. There is no substance in the plea of the learned counsel for the respondent that Rule 26 sub-rules (1) and (2) has limited operation and does not wipe out entitlement to pension as quantified in Rule 49. The said rule deals with amount of pension and not with entitlement.

6. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent.

7. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. (See [Institute of Chartered Accountants of India v. M/s Price Waterhouse and Anr.](#) The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford v. Spooner*, courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See the *State of Gujarat and ors. V. Dilipbhai Nathijibhai Pate and Anr.* It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See *Stock v. Frank Jones (Tipton) Ltd.* Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord

Loreburn L.C. in Vickers Sons and Maxim Ltd. v. Evans quoted in Jamma Masjid V. Kodimaniandra Deviah.

8. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage. The view was re-iterated in Union of India and Ors. V. Filip Tiago De Gama of Vedem Vasco De Gama. (SCC p.284, para 16).

9. In Dr. R. Venkatchalam v. Dy. Transport Commissioner, it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

10. The above position was highlighted by this Court in Maulavi Hussein Haji Abraham Umarji V. State of Gujarat.

11. The High Court's judgment affirming the order of the Tribunal cannot be sustained and deserves to be set aside which we direct. The appeal is allowed but without any order as to costs."

31. We find Rule 26(1) and (2) of the Central Civil Services (Pension) Rules, 1972 are pari materia provisions to Rule 46(1) and (2) of the Maharashtra Civil Services Rules. This decision of the Apex Court in the case of **Union of India and ors. Vs. Braj Nandan Singh** squarely covers the controversy in the present case. Thus, applying the very same analogy adopted

by the Apex Court while construing Rule 26(1) and (2) of the Central Civil Services (Pension) Rules, 1972, we have no hesitation in holding that the language of Rule 46 is also couched in mandatory terms. Rule 46 of the said Rules in clear terms provide that resignation from a service or a post entails forfeiture of past service, unless it is allowed to be withdrawn in the public interest by the appointing authority. Sub-Rule (2) of Rule 46 is in the nature of an exception. It provides that resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the government where service qualifies. The language of Rule 46 is very clear and unambiguous. As observed by the Apex Court it is trite law that all the provisions of a statute have to be read together and no particular provision is to be treated as superfluous. It is further observed by the Apex Court that it is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a

statute is the determinative factor of legislative intent. The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As observed in *Crawford v. Spooner* (1846) 6 Moo PC 1, Courts, cannot aid the legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.

32. As observed by the Apex Court, the question is not what may be supposed and has been intended but what has been said. Thus, language of Sub-Rule (1) of Rule 46 is very clear that resignation from a service or a post entails forfeiture

of past service. Present is a clear case of resignation of service. The petitioners resigned from service which was accepted by the Competent Authority. Once we come to the conclusion that the petitioners have resigned from the service, it is not possible for us to give any other meaning to Rule 46(1) but to conclude that the petitioners resignation from service has entailed in forfeiture of their past service.

33. The petitioners have not even succeeded in establishing from the materials on record that their case juxtaposed with Rule 66 of the said Rules substantially fulfill the essential components of Rule 66 to enable us to consider whether 'resignation' could be treated as 'voluntary retirement' from service. In the present case if we are to treat the 'resignation' as 'voluntary retirement', then, we would be virtually reading something into Rule 66, which is not permissible for us to do so. For, by doing this, we would not only read 'resignation' as 'voluntary retirement' in Rule 66, but we would virtually wipe out the mandate of Rule 46 of the said

Rules. No doubt, in a given case, where it is absolutely necessary and in the interest of justice, where the facts indicate that the essential components of Rule 66 are substantially fulfilled, it may be possible to give benefit of Rule 66 to the employee.

34. We may also make a useful reference to the decision of the Apex Court in the case of **Uco Bank and ors. Vs. Sanwar Mal** (*supra*) where it is held that State being a model employer should construe the provisions of beneficial legislation in a way that extends benefit to its employees, instead of curtailing it. However, we find that essential components of Rule 66 are not even substantially complied to extend the benefit of Rule 66. It is well settled that in service jurisprudence, the expressions “resignation” and “voluntary retirement” have different connotation. Both the cases involves voluntary acts and the employee has to leave service. Though both involves voluntary act but they operate differently. One of basic distinction in case of resignation is that it can be tendered at any time. In case of

the voluntary retirement, it can be availed after rendering the prescribed period of voluntary service. Other fundamental distinction is that in case of former, the formal retiral benefits are denied, but in case of later, the same is not denied. In case of former, permission or notices is not mandatory, while in case of later, permission of employer concerned is requisite condition as held by the Apex Court in case of **Reserve Bank of India Vs. Cecil Dennis Solomon. (2004) 9 SCC 461**. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary.

35. In this view of the matter, the petitioners having tendered their resignation from service has resulted in the cessation of their employment. This is a case which would squarely fall within Rule 46(1) of the said Rules which entails forfeiture of their past service. It is not possible for us to extend the benefit of Rule 66 to the petitioners in the facts of the present case. Consequently, we do not find any merit in this

Petition. The same is accordingly dismissed. Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)