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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.5256 of 2015

and

W.M.P.(MD) No.11390 of 2016

P.Arockiyamary

... Petitioner

vs.

1.The Principal Secretary to the Government
Department of Finance
Fort St.George, Chennai-600 009

2.The Principal Secretary to the Government
Department of School Education
Fort St.George, Chennai-600 009

3.The Accountant General
(Accounts & Entitlements)
Tamil Nadu, Chennai-18

4.The District Educational Officer (South)
O/o.District Educational Officer
Dr.Ambedkar Government Higher
Secondary School Campus
Ground Floor, Egmore
Behind Gandhi Irwin Bridge
Chennai-600 008

5.The Correspondent
School for the Blind
Little Flower Convent
Cathedral Post, Chennai-600 006

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondents to provide pension to the petitioner along with arrears for the services rendered by the petitioner as Secondary Grade Assistant from 01.07.1967 to 30.09.1978 at 5th respondent School in accordance with the Rule 12-a of the Tamil Nadu Non-Government Teachers Pension Rules 1958/G.O.Ms.No.1109, Education Department, dated 31.05.1958, within a time stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mrs.S.Srimathy

Special Government Pleader for R1, R2 & R4

Mr.P.Gunasekaran for R3

Mr.R.Subramanian for R5

O R D E R

The relief sought for in the present writ petition is for a direction to the respondents to provide pension to the writ petitioner along with arrears for the services rendered by her as Secondary Grade Assistant from 01.07.1967 to 30.09.1978 in the fifth respondent / School in accordance with Rule 12-a of the Tamil Nadu Non-Government Teachers Pension Rules, 1958 / G.O.(Ms.) No.1109, Education Department, dated 31.05.1958, within a stipulated time.

2. The facts in nutshell in respect of the *lis* on hand are that:

2.1. The writ petitioner was appointed as a Secondary Grade Assistant, on 01.07.1967, in the School for Blind, Little Flower Convent, Cathedral Post, Chennai-600 006 / fifth respondent. The writ petitioner had served about 11 years and resigned her job on 30.09.1978. The resignation was tendered on account of certain domestic issues. The writ petitioner claims that she is entitled for pension in view of the fact that she had completed the minimum qualifying period of service of ten years, as per the Pension Rules and as per G.O.(Ms.) No.1109, Education Department, dated 31.05.1958. It is contended that the writ petitioner made repeated requests before the competent authorities for several years and her claim for grant of pension is yet to be considered. Thus, the writ petitioner is constrained to move the present writ petition for grant of pension in respect of the services rendered by her in the post of Secondary Grade Assistant from 01.07.1967 to 30.09.1978, in the fifth respondent / School, in accordance with Rule 12-a of the Tamil Nadu Non-Government Teachers Pension Rules, 1958 / G.O.(Ms.) No.1109, Education Department, dated 31.05.1958.

3. To substantiate the claim of the writ petitioner, the learned counsel for the writ petitioner has placed reliance upon the following decisions:

3.1. In the case of the **Government of Tamil Nadu vs. S.V.Paul Jayaraj**, reported in (2001) 3 MLJ 430, this Court has held as follows:

"It is therefore clear that a teacher who has resigned even after the crucial dates can be sanctioned pension by the respective authorities competent to sanction pension even without any specific orders from the higher authorities or of the Government condoning the resignation in each individual case. This would clinch the issue in favour of the respondent teacher and we find that the learned single



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Judge has also relied on the aforementioned Government Order, G.O.Ms.No.37. This is apart from the fact that even the language of the Government Order dated 5.6.1981 and more particularly of paragraph 6(ii) cannot be interpreted so as to oust the teachers who have resigned after the introduction of the Pension Scheme. The provision has to be interpreted as giving a concessions even to the persons who have resigned earlier to the institution of the said Pension Scheme. We need not go into that aspect because G.O.Ms.No.37 is more than clear. Therefore, we confirm the judgment of the learned single Judge. We are told that there is a stay in the matter. We direct the Government to finalise the pension of the respondent teacher within three months from today."

3.2. In the case of S.Sankaran vs. Accountant General and others, W.P.(MD) No.7510 of 2010, order dated 30.08.2010, this Court has held as follows:

"13.The contention of the second respondent that as per 23 of the Tamil Nadu Pension Rules, 1978 the petitioner is not entitled to claim pension cannot also be accepted as the pension rules came to effect only in 1978, whereas, the petitioner resigned the job way back in 1964 and at that time, nobody would have thought of passing such rules.

14.Therefore, I am of the considered view that the petitioner has satisfied the Rule 12-a of the Rules stated above and therefore he is entitled to pension for the service rendered by him. Hence, the first respondent is directed to consider the case of the petitioner for pension within a period of four weeks from the date of receipt of a copy of this order failing which the first respondent has to pay interest at the rate of 12% from 30.09.2004 i.e. the date on which the pension proposal was received in their office.

15.With the above directions and observations, this Writ Petition is allowed as indicated above. No costs."

3.3. In the case of the State of Tamil Nadu and another vs. V.Jesudoss, W.A.No.1651 of 2000, Judgment dated 08.07.2008, the Honourable Division Bench of this



Court has held as follows:

"7. It is now a settled law that pension is neither a bounty nor a matter of grace depending on the sweet will of the employer. It creates a vested right subject to the rules which are statutory in character. Pension is not an ex-gratia payment. But, it is a payment for the past service rendered. It is a social welfare measure rendering socio-economic justice. It is an assurance of the employer that in the old age, the employee would not be left in the lurch [D.S.Nakara & Others v. Union of India - 1983 (1) LLJ 104 = (1983) 1 SCC 305 = AIR 1983 SC 130].

8. So far as the Pension Rules, 1978 is concerned, Chapter III deals with qualifying service (Rule 11). Rule 12 stipulates conditions subject to which service qualifies. Rule 25 relates to condonation of interruption in service.

The forfeiture of service is stipulated under Rule 21 in case of dismissal or removal, which reads as under:

Rule 21:

Forfeiture of service on dismissal or removal.- Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service.

As far as the resignation is concerned, it also stipulates forfeiture of service except in certain condition under Rule 23 and quoted here under:

Rule 23:

Forfeiture of service on resignation.- (1) Resignation from service or post entails forfeiture of past service.

Provided that 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.

(2) Interruption in service in a case falling under the proviso to sub-rule (1), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall



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be covered by grant of leave of any kind due to the 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 the Government servant."

9. Admittedly, the first respondent resigned from service on 31.10.1977. The said resignation was accepted by the competent authority. It is not alleged that any proceeding was initiated against the first respondent or was to be initiated at that stage, which was the reason for submission of resignation by the first respondent. No misconduct or dereliction of duty, while he was in service, was alleged against him. In such case, whether it can be stated that the resignation in the case of first respondent also entails forfeiture of past service.

10. Under proviso to Rule 23, it would be evident that the resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission for another appointment. It is not clear that if a person submits a simplicitor resignation and against whom no proceedings is pending or allegation is pending and if he wants to take rest in his life or is suffering from ailment, whether in such case, resignation will amount to forfeiture of past service. In such case where the resignation is simplicitor, not because of any departmental proceeding or any allegation and has been accepted by the competent authority, if they are equated with those dismissed or removed from service, according to us, it will render two unequal as equal and will be violative of Article 14 of the Constitution of India.

11. In the aforesaid background, to uphold Rule 23 as not violative of of Article 14 of the Constitution of India, it is to be held that resignation simplicitor will not entail forfeiture of past service; only in those cases where a person submits resignation because of any allegation or proceedings which otherwise would have attracted punishment like dismissal or removal from service, the provisions of Rule 23 will be attracted forfeiting the past service.



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12. This will also be evident from the Government of Tamil Nadu proceedings in R.Cis.No.13053/Pension/13/83 dated 21.1.1983. By the said proceedings, the crucial date from which staff of non Government educational institution are entitled for pension was fixed as 5.6.1991. It was ordered that those who have resigned prior to 5.6.1991 would not be entitled to the benefit. At paragraph 4 of the proceedings dated 21.1.1983, the Government of Tamil Nadu made the following provision:

"Even in cases of "resignation" after the crucial dates, the Government have in a number of hard cases of particulars individuals relaxed the stipulation and allowed retirement benefit to "resigned" teachers also.

13. By G.O.Ms.No.396 dated 12.9.1997, in view of the order of the High Court, the Government of Tamil Nadu considered one of such cases, viz. one Mr.TAP.Srinivasan, who resigned from service prior to 5.6.1991 and was allowed the pensionary benefit. It would be, thus, evident that in case of resignation of service, it will not automatically forfeit the service of a person, otherwise, it would not have allowed the State Government to pay the pension. But, such interpretation is to be given only in case a person resigns from service during the pendency of a departmental proceeding or because of an allegation pending consideration.

14. In fact, the cut off date, viz. 5.6.1991 fixed by the State Government in the matter of granting retirement benefits to the employees who have resigned from service fell for consideration before this Court in W.P.No.3066 of 1995. By order dated 14.3.1997, P.Sathsivam, J, while considering the identical contention, held as under:

"With regard to the cut-off date as relied upon by the learned Government Advocate Mr.D.Krishnakumar has brought to my notice a decision of Lakshmanan, J., in P.M.Subramanian Vs. The State of Tamil Nadu and Another 1992 Writ Law Reporter 691. In the said decision, the learned Judge relying upon earlier decision of Supreme Court as well as some of the decisions of this Court



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has held that the date of retirement is irrelevant and the revised scheme would be operative from the date mentioned in that scheme and would bring under its umbrella all existing pensioners who retired prior to the specified date and their pension would be computed afresh and would be payable in future commencing from the specified date. Even though the liberalised pension scheme has been introduced in the year 1958, in view of the subsequent clarifications by way of various Government orders as rightly pointed out by Lakshmanan, J., following the decision of the Supreme Court reported in 1983 1 LLJ 104, I am of the view that the date of retirement is irrelevant. When the object of the Government is to give pension to all eligible and qualified person or persons, the date of retirement is irrelevant. Under these circumstances, as already stated the petitioner had qualifying service i.e. 10 years 9 months and 18 days, and therefore, the petitioner is entitled to succeed in the present writ petition."

15. In view of the observation made by us and the decision of this Court as noticed above, we find no ground made out to interfere with the order made by the learned single Judge. We are not inclined to accept that the first respondent having resigned from service, his services stood forfeited for the purpose of pension. So far as the question of quantum of payment of pension is concerned, we are leaving that matter open to the competent authority, who has to calculate the period of service for calculating the pension and pay the admitted pensionary benefit to the first respondent in terms with the order passed by the learned single Judge.

The writ appeal thus stand disposed of with the aforesaid observation. There shall be no order as to costs."

3.4. In the case of R.Nandakumar vs. The Commissioner and Director of Technical Education, Chennai and another, reported in **2011 Writ L.R. 52**, this Court has held as follows:

"6. In the light of the above submission and decision of the Division Bench cited above,



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this writ petition is disposed of, giving liberty to the petitioner to make a representation before the Secretary to Government, Higher Education Department, Government of Tamil Nadu within a period of two weeks from the date of receipt of a copy of this order and the said authority is directed to consider such representation of the petitioner, in the light of the Division Bench judgment in *The Government of Tamil Nadu v. S.V.Paul Jayaraj* [(2001) 3 MLJ 430] and in the light of the orders made in SLP (Civil) No.22469 of 2001 dated 10.01.2002 and in the review petition No.54 of 2002, which was implemented as per G.O. dated 07.8.2002 and pass orders, within a period of three months from the date of receipt of a copy of the representation of the petitioner. It is a well accepted principle of law that equality shall be maintained even in discretionary matters by the Government in compliance with Article 14 of the Constitution of India. It is made clear that if the petitioner is granted relaxation of the said Rule, the second respondent shall sanction pension to the petitioner within a period of four weeks from the date of the said order to be passed by the Government. There shall be no order as to costs."

3.5. In the case of *K.V.Vanaja vs. The Secretary to Government*, reported in (2013) 3 MLJ 895, the Honourable Division Bench of this Court has held as follows:

"3. It is seen that the third respondent is only an authority to implement the order of Respondents 1 and 2. In other words, the question as to whether the appellant is entitled for pension either under the Scheme or as per the Government Order has to be decided by respondents 1 and 2 and not by the third respondent. Even though the learned counsel appearing for the appellant has made submissions on the entitlement to get pension, which has been passed by the learned counsel appearing for the third respondent, considering the facts and circumstances of the case, we deem it fit to direct the appellant to approach respondents 1 and 2 being the competent authorities to consider the grant of pension. Admittedly, respondents 1 and 2 have not taken



01.08.2008 and other retirement benefits within a period of three months from the date of receipt of a copy of this order.

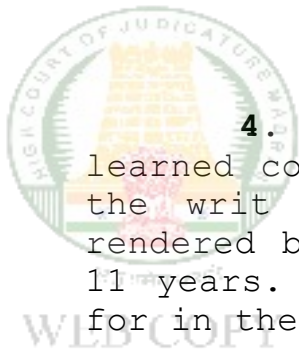
13. The Writ Appeal is disposed of accordingly. No costs."

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3.7. In the case of **M.K.Sivakami vs. The Honourable Principal District Judge**, reported in **2017 (4) MLJ 327**, the Honourable Division of this Court has held as follows:

"22. From the above, it becomes imminently clear that where the factors, which compel a Government servant to tender resignation to his services are similar to the ones, which have been pointed out supra by the Supreme Court, for the very same reasons, no compassionate allowance may become payable in cases of resignation from service, but otherwise if the factors are identical or similar, in such a case, denying to make payment of pension in the form of compassionate allowance is neither just nor fair. A welfare State can ill afford to ignore the claims of such persons, who have tendered resignation wholly due to medical grounds or personal reasons, but not for taking up an alternative assignment.

23. We, therefore, hope and trust that the Government would spare appropriate attention immediately to this area because it has a general and universal application across the spectrum of all Government services. Even if a Proviso is added to Rule 23 for making payment of compassionate allowance to such cases of resignation, it would meet the ends of justice. We hope and trust that the State Government would take appropriate decision within the next three months and then communicate their decision to the Principal Accountant General for grant of pension in the form of compassionate allowance to the writ petitioner as well. The State Government will make sure that payment of such pension in the form of compassionate allowance becomes available to all the Government servants, who have tendered resignation purely for personal reasons, but not attributable to either their conduct or other factors as enumerated in the judgment of the Supreme Court."



4. Relying on the above cited decisions of this Court, the learned counsel appearing for the writ petitioner reiterated that the writ petitioner is entitled for pension for the services rendered by her in the post of Secondary Grade Teacher for about 11 years. Thus, the writ petitioner seeks the remedy as sought for in the present writ petition.

5. The learned Special Government Pleader appearing on behalf of the respondents 1, 2 and 4 disputed the contentions of the writ petitioner by stating that as per Rule 23 of the Tamil Nadu Pension Rules, 1978 (hereinafter, referred to as "the Rules"), the writ petitioner is not entitled for pension as she had admittedly resigned her job on 30.09.1978 and accepting the order of resignation, the authority competent relieved the writ petitioner from service in proceedings, dated 18.01.1979. In view of the fact that the resignation of the writ petitioner was accepted by the authority competent on 18.01.1979, she is not entitled for any pensionary benefits in view of the express bar contemplated in Rule 23 of the Rules. Even the erstwhile Pension Rules also contemplates that the resignation amounts to forfeiture of the services. Thus, the learned Special Government Pleader appearing for the respondents 1, 2 and 4 contended that the writ petition is liable to be rejected.

6. The learned counsel appearing for the third respondent submitted catena of decisions by stating that the decisions of this Court, relied on by the learned counsel for the writ petitioner, were overruled and the recent decision of the Honourable Supreme Court draws a distinction between "resignation", "retirement" and "voluntary retirement". Even during 2016, the Honourable Division Bench of this Court has not accepted the contention that the resigned employees are entitled to get pension under the Rules. It is further contended that the resignation of the writ petitioner was accepted and he was relieved on 18.01.1979 after implementation of the Rules. Thus, applying the provisions of the Rules, the case of the writ petitioner is to be rejected. The writ petitioner resigned her job on 30.09.1978 and she was relieved on 18.01.1979 and filed a writ petition after a lapse of many years and therefore, on the ground of delay and laches, the writ petition is liable to be dismissed in *limine*.

7. In support of his contentions, the learned counsel for the third respondent has placed reliance upon the following decisions:

7.1. In the case of **C. Jacob vs. Director of Geology & Mining**, reported in **(2008) 10 SCC 115**, the petitioner therein filed a writ petition after a lapse of many years and therefore, the Honourable Supreme Court has held that such a stale claim cannot be entertained and the



same is liable to be rejected, on the ground of delay. In this regard, Paragraph No.14 of the said decision is extracted hereunder:

"14. We are constrained to refer to the several facets of the issue only to emphasise the need for circumspection and care in issuing directions for "consideration". If the representation on the fact of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing "consideration" of such claims."

7.2. Paragraph No.20 of the said decision is extracted hereunder:

"A government servant, whose case does not fall under any of the classes of pensions enumerated in Chapter V, is not entitled to pension".

7.3. In respect of the writ petitioner in the present writ petition is concerned, she does not fall under any of the classes enumerated in the Rules. Therefore, she is not entitled for pensionary benefits.

7.4. In ***Uco Bank vs. Sanwar Mal***, reported in **(2004) 4 SCC 412**, the Honourable Supreme Court has defined the terms "resignation" and "retirement". In Paragraph No.9 of the said decision, the Honourable Supreme Court has held that a person can resign at any point of time, even on the next day of his appointment, but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying period of service prescribed in the Rules. In this regard, Paragraph No.9 of the said decision is extracted hereunder:

"9. We find merit in these appeals. The words "resignation" and "retirement" carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is severance of employment but in service jurisprudence both the expressions are understood differently. Under the Regulations, the expressions "resignation" and "retirement" have been employed for different purpose and



investment to retirees. They are provided avenue to put in their savings and as a term or condition which is more in the nature of an eligibility criteria the scheme disentitles such category of employees out of it."

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7.5. Paragraph No.5 of the decision in the case of **Union of India and others vs. Braj Nandan Singh**, reported in **(2005) 8 SCC 325** is extracted hereunder:

"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



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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. Said Rule deals with amount of pension and not with entitlement."

7.6. More importantly, in Paragraph No.6 of the said decision, the Honourable Supreme Court has held as follows:

"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."

7.7. The learned Single Judge of this Court, by order dated 03.10.2012, in W.P.(MD) No.618 of 2012, has held as follows:

"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."



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7. *It is not possible for this Court to add words to the statutory rules, to hold that a person, who resigned from service on medical ground or for some other reason can be treated at par with those employees who resign to join other services. The Rule 23 of Pension Rules is clear that a resignation results in forfeiture of service which disentitles the government employee to pension."*

8. Considering the arguments advanced by the learned counsel on either side, this Court is of the opinion that the language employed in the provisions of the Rules cannot be interpreted so as to breach the intention of the rule-makers. The intention of the rule-makers, with reference to Rule 23 of the Rules, is unambiguous that *"Resignation from a service or post entails forfeiture of past service."* The proviso clause states that *"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."* Therefore, the Rules are unambiguous in respect of the concept of resignation.

9. Letter of resignation can be submitted at any point of time, after joining into a service. An employee is entitled to resign his job even on the next day of his joining into service. However, no such facility is provided in the cases of retirement and voluntary retirement. An employee is entitled to opt for the voluntary retirement scheme, provided he has completed the qualifying period of service as prescribed in the Rules. An employee is allowed to retire from service, if he attains the age of superannuation as per the Service Rules. These three distinct concepts cannot be read equally. These three distinct circumstances arose on account of the services rendered by the employee concerned on various circumstances. These are all the concessions provided to the employee, except in case of retirement. Retirement is a definite one, where the employee is relieved from service by the employer on attaining the age of superannuation. Therefore, no option has been provided to the employee to continue in service after retirement. Thus, the concept of retirement cannot be compared with the other two circumstances arising on account of resignation by an employee or an employee opting for voluntary retirement scheme. Under these circumstances, it is better to exclude the term "retirement" in respect of the circumstances arose in the present case.

10. Let us now consider the terms "voluntary retirement" and "resignation". The concept of resignation is introduced in the Service Rules, which is in accordance with the judicial prudence enabling the employee concerned to leave the service immediately on certain extraordinary circumstances.

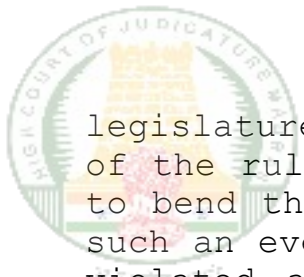


However, the decision is voluntary and choice of the employee concerned. Thus, resignation is a facility provided to the employees to get relieved from the service immediately and without delay. For example, if an employee decides to join in a political party and contest in the Assembly Election or Parliamentary Election, then he can immediately resign his job and contest in the elections or take assignment as per his choice. However, no such facility is available under the voluntary retirement scheme.

11. Voluntary retirement scheme contains certain terms and conditions. The employee must have completed the qualifying period of service, even for submission of the application under the voluntary retirement scheme. This apart, the application for voluntary retirement would be considered only after completion of the period of three months or as prescribed by the employer in the scheme. Therefore, the qualifying period of service is the pre-condition for opting voluntary retirement and further, waiting period is also prescribed for the acceptance of the application submitted under the voluntary retirement scheme. Thus, the resignation as well as the voluntary retirement scheme are distinct and different and it cannot be compared with each other.

12. As far as the present writ petition is concerned, the writ petitioner had admittedly given the letter of resignation on certain family circumstances on 30.09.1978. The authority competent accepted the resignation letter and relieved the writ petitioner from service on 18.01.1979. Thus, Rule 23 of the Rules operates against the writ petitioner in respect of the claim for grant of pension under the Pension Rules. Rule 23 of the Rules unambiguously enumerates that resignation amounts to forfeiture of services. There is no possibility of other interpretation in respect of various circumstances resulted in submission of resignation by the employees. Thus, the decisions referred by the writ petitioner that on medical grounds, if an employee resigns his job, he is entitled for pension under the Rules, are diagonally opposite to the purport and intention of Rules. The Rules cannot be interpreted in a different manner as decided by the Honourable Supreme Court in the case of **Union of India and others vs. Braj Nandan Singh** (cited supra), wherein the Honourable Supreme Court in unequivocal terms held 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."*

13. While interpreting the statutes, the rule of interpretation requires that the statutes are to be interpreted in its language and the same cannot be interpreted contrary to the purpose, object as well as the intention of the legislature. Thus, the object of reasons as well as the intention of the



legislature must be the prime factor for ascertaining the meaning of the rule and there cannot be any contrary interpretation so as to bend the provision for the purpose of granting the relief. In such an event, the very intention and purpose of the Rule would be violated and the same will set a wrong precedent, which may be followed by the other persons resulting dilution and violation of the statutory provisions, which is impermissible and cannot be construed as in consonance with the provisions of the Constitution of India.

14. Beyond all the Judgments cited above, recently, the Three Judges Bench of the Honourable Supreme Court of India in the case of **LIC vs. Shree Lal Meena**, reported in **(2019) 4 SCC 479**, has defined the term "retirement", "voluntary retirement" as well as "resignation" and in the said decision, the Judgment of the Honourable Supreme Court of India in the case of **J.K.Cotton Spg. & Wvg. Mills Co. Ltd. vs. State of U.P.**, reported in **(1990) 4 SCC 27 : AIR 1990 SC 1808**, has been distinguished in Paragraph No.21, which is extracted hereunder:

"21. The judgment in JK Cotton Spinning & Weaving Mills Co. Ltd., Kanpur has, thus, to be considered in that context. What was the issue in that case? The first paragraph of the judgment itself clarifies that aspect. Whether determination of an employer-employee relationship amounted to retrenchment, within the meaning of the provisions of the Act applicable is what was being looked into. We have already noticed, while referring to the facts of that case hereinbefore, that the employee in question tried to act clever by half. He firstly resigned. The resignation was accepted and the consequent monetary benefit flowed to him. Thereafter, he sought to bring his resignation within the meaning of 'retrenchment' Under Section 2(s) read with Section 6N of the Uttar Pradesh Industrial Disputes Act, 1947. The definition of 'retrenchment' itself clearly excluded voluntary retirement of the workman. The employee, having voluntarily resigned, the termination of relationship of employer and employee could not come within the meaning of 'retrenchment'. This Court analysed the difference between the meaning of resignation and retrenchment. The resignation was voluntary. It is in this context that it was observed that a voluntary tendering of resignation would be similar to voluntary



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retirement and not retrenchment. Nothing more and nothing less. Thus, in our view, the High Court, both the learned Single Judge and the Division Bench, appeared to have read much more into this judgment than the legal proposition which it sought to propound."

15. Paragraph Nos.22 and 23 of the said decision are also important and extracted hereunder:

"22. The principles in the context of the controversy before us are well enunciated in the judgment of this Court in Reserve Bank of India and Anr. v. Cecil Dennis Solomon and Anr.⁵ On a similar factual matrix, the employees had resigned some time in 1988. The RBI Pension Regulations came in operation in 1990. The employees who had resigned earlier sought applicability of these Pension Regulations to themselves. The provisions, once again, had a similar Clause of forfeiture of service, on resignation or dismissal or termination. The relevant observations are as under:

10. In service jurisprudence, the expressions "superannuation", "voluntary retirement", "compulsory retirement" and "resignation" convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general Rule can be displaced by express provisions to the contrary. In Punjab National Bank v. P.K. Mittal [MANU/SC/0425/1989 : AIR 1989 SC 1083] on interpretation of Regulation 20(2) of the



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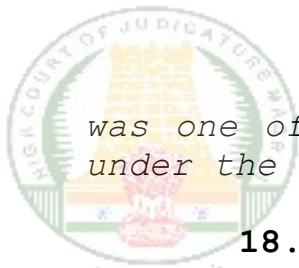
Punjab National Bank Regulations, it was held that resignation would automatically take effect from the date specified in the notice as there was no provision for any acceptance or rejection of the resignation by the employer. In *Union of India v. Gopal Chandra Misra* [MANU/SC/0370/1978 : (1978) 2 SCC 301] it was held in the case of a judge of the High Court having regard to Article 217 of the Constitution that he has a unilateral right or privilege to resign his office and his resignation becomes effective from the date which he, of his own volition, chooses. But where there is a provision empowering the employer not to accept the resignation, on certain circumstances e.g. pendency of disciplinary proceedings, the employer can exercise the power.

11. On the contrary, as noted by this Court in *Dinesh Chandra Sangma v. State of Assam* [MANU/SC/0320/1977 : (1977) 4 SCC 441] while the Government reserves its right to compulsorily retire a government servant, even against his wish, there is a corresponding right of the government servant to voluntarily retire from service. Voluntary retirement is a condition of service created by statutory provision whereas resignation is an implied term of any employer-employee relationship."

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

16. The Honourable Supreme Court has categorically held that resignation is the unilateral determination of an employee-employer relationship, whereby, an employee cannot be a bonded labor.

17. In Paragraph No.42 of the said decision, the Honourable Supreme Court has clearly distinguished by stating that "service jurisprudence, recognizing the concept of "resignation" and as different connotations, left no manner of doubt that the benefit could not be extended, especially as resignation



was one of the disqualifications for seeking pensionary benefits, under the Regulations."

18. Further, in the said decision, the Honourable Supreme Court of India, in unambiguous terms, clarified that wherever the Rules provide resignation amounts to forfeiture of the services, then, an employee, who resigned his job, which was accepted by the authority competent, cannot claim any pensionary benefits under the Rules. He voluntarily withdraw the benefit of the pensionary benefits on account of the specific provision in the Rules. Therefore, the Court cannot provide a contrary interpretation by accepting the arguments of the learned counsel for the writ petitioner for the purpose of grant of pensionary benefits under the provisions of the Rules.

19. Once an employee opted for resignation and the authority competent accepted the resignation and relieved the employee from service, then Rule 23 of the Rules operates against him and his services are forfeited and therefore, such an employee, who opted for resignation, cannot claim any benefit under the Rules. Thus, even the compassionate allowance, sought for by the writ petitioner as an alternative relief, cannot be granted.

20. The benefit of compassionate allowance is provided under Rule 40 of the Rules, which is extracted hereunder:

"40. Compassionate allowance. - (1) A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity.

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on medical certificate.

Provided further that no allowance shall be granted to an officer under the Rule-making control of the Government of India, other than those who are governed by All India Services (Death-cum-Retirement Benefits) Rules, 1958, without further sanction:

Provided also that no compassionate allowance shall be granted in cases of Government servants dismissed or removed from service under the second proviso (a) to clause (2) of Article 311 of the Constitution of India, for overt, anti-national activities such as sabotage, espionage and like.



(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the limit specified in sub-rule (5) of Rule 43."

21. The above Rule contemplates that a Government servant, who is dismissed or removed from service, shall forfeit his pension and gratuity. However, the proviso clause states that the authority competent may, in deserving cases of special consideration, sanction compassionate allowance not exceeding two-thirds of pension or gratuity or both, which would be admissible.

22. The compassionate allowance is a special provision provided in the Rules so as to consider certain hard cases for the grant of compassionate allowance. For instance, if an employee was removed or dismissed from service on account of certain allegations of unauthorized absent for a month or two or on account of certain other family circumstances, which all are not much serious, then, the authority competent at the time of issuing the order of dismissal or removal is empowered to take a decision regarding the grant of compassionate allowance to such an employee. In normal circumstances, the employee dismissed or removed from service on account of certain grave charges cannot be considered for grant of compassionate allowance. The said provisions are provided enabling the authorities to consider the isolated hard cases, where such cases are required to be considered by applying the principles of equity and compassion. Such a special provision cannot be provided in respect of the employees, who resigned the job and Rule 40 of the Rules for grant of compassionate allowance is absolutely inapplicable in respect of the cases, where the employee resigned his job and the resignation was accepted. In all such cases of resignation, Rule 23 of the Rules alone will operate and therefore, the resignation amounts to forfeiture of services and accordingly, the employees, who had resigned their job, are not entitled for compassionate allowance under Rule 40 of the Rules.

23. This being the principles to be followed with reference to the Judgments of the Honourable Supreme Court, this Court is of the considered opinion that the writ petitioner is not entitled for pension as she had resigned her job and the resignation was accepted by the authority competent. The writ petitioner cannot be granted with the compassionate allowance under Rule 40 of the Rules in view of the fact that the special provision for grant of compassionate allowance is inapplicable in respect of the employees, who resigned their job. Under these circumstances, the writ petitioner is not entitled for the relief as such sought for in the present writ petition.



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24. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Ad-II)

// True Copy //

Sub Assistant Registrar(CS)

To:

1.The Principal Secretary to the Government,
Department of Finance,
Fort St.George, Chennai-600 009.

2.The Principal Secretary to the Government,
Department of School Education,
Fort St.George, Chennai-600 009.

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+1 CC to Mr.R.SUBRAMANIAN, Advocate SR-77456.

+1 CC to Mr.P.GUNASEKARAN, Advocate SR-77446.

+1 CC to SPL GP SR-77755.

W.P. (MD) No.5256 of 2015

and

W.M.P. (MD) No.11390 of 2016

24.07.2019

CS (01.08.2019) 23P 7C