# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1123 of 2018**
**In**
**Civil Writ Jurisdiction Case No.11678 of 2009**

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Prabesh Kumar Jha, son of Sri Nachari Jha, resident of village + P.O.- Paricharpur, P.S.- Rajnagar, District- Madhubani.

... ... Appellant/s

Versus

1. The Life Insurance Corporation of India through the Chairman, L.I.C. of India, Central Office, Yogaksheman, Mumbai.
2. The Chairman, L.I.C. of India, Central Office, 'Yogaksheman', Jeevan Bima Marg, Mumbai.
3. The Zonal Manager, L.I.C. of India, Eastern Zonal Office, Hindustan Building, 04 Chitranjan Avenue, Kolkata-700072.
4. The Zonal Manager, L.I.C. of India, East Central Zonal Office, Jeevan Deep Building, Exhibition Road, Patna.
5. The Senior Divisional Manager, L.I.C. of India, Muzaffarpur, Divisional Office, Jeevan Prakash, Umashankar Prasad Marg, P.B. No.3, Muzaffarpur.
6. The Manager (CRM), L.I.C. of India, Divisional Office, Muzaffarpur.
7. The Branch Manager, L.I.C of India, Branch Office, Jhanjharpur, District-Madhubani.

... ... Respondent/s

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**Appearance :**

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| For the Appellant/s | : | Mr.Suraj Kumar, Advocate. |
| | | Mr. Pramod Mishra, Advocate. |
| For the Respondent/s | : | Mr.Rakesh Kumar, Advocate. |
| | | Mr. Abhimanyu Vatsa, Advocate. |
| | | Mr. Rashi Kant Singh, Advocate. |
| | | Mr. Sameer Sawarn, Advocate. |

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**
**and**
**HONOURABLE MR. JUSTICE PURNENDU SINGH**
**ORAL JUDGMENT**
**(Per: HONOURABLE MR. JUSTICE PURNENDU SINGH)**

**Date : 13-12-2022**

In the present appeal, appellant has assailed the order dated 07.03.2018 passed in C.W.J.C. No. 11678 of 2009 whereby and whereunder learned Single Judge was pleased to dismiss the writ application filed on behalf of the appellant.

2. The brief facts of the case are that the appellant was appointed on 01.03.1985 on the post of Assistant in the Life Insurance Corporation of India. He joined Jhanjharpur Branch on 07.03.1985. He was promoted to the post of Assistant Administrative Officer (A.A.O) in December, 1999. The appellant submitted an application dated 06.07.2006 before the Zonal Manager, Kolkata through proper channel tendering his resignation from the service which was forwarded to the Manager, LIC of India, Muzaffarpur on 07.07.2006. The appellant submitted another letter addressed to the Branch Manager on 22.09.2006 with the prayer to accept his resignation as submitted earlier. The resignation was accepted and it was conveyed to the appellant vide letter dated 14.10.2006 by the Senior Divisional Manager, Muzaffarpur. The Divisional Office, Muzaffarpur made letter dated 07.12.2006 requesting the Branch Manager, LIC of India, Block Office, Jhanjharpur to settle the terminal benefits to the appellant. When no action was taken, the appellant under Right to Information Act, 2005 on 08.06.2007 sought information from the Chairman, LIC of India, Jeevan Marg, Mumbai as to why he was not paid his retiral benefits. The Manager (CRM) vide letter dated 29.10.2007 in response to the information sought by the appellant had communicated to him that the resignation

tendered by the appellant was accepted by the competent authority and as is not entitled for pensionary benefits in terms of Rule 23 of the LIC Employee Pension Rules. The appellant sought clarification vide letter dated 03.11.2007 from the Right to Information Department, Central Office, Mumbai in respect of communication dated 29.10.2007 regarding denial of his pensionary benefits. The RTI department informed if he is aggrieved by letter dated 29.10.2007 he may prefer an appeal within 30 days before the Senior Divisional Manager Operator, LIC of India, Divisional Office, Muzaffarpur. The appellant instead of preferring appeal filed his representation dated 10.12.2007 before the Chairman, LIC of India, Mumbai to the effect that due to inadvertence he had written the word ‘resignation’ in place of ‘voluntary retirement’ in his application dated 07.07.2006 and he requested that his request of resignation should be treated as request seeking voluntary retirement as the same has been made inadvertently. The appellant made his request again before the Chairman, LIC of India, Mumbai vide letter dated 19.05.2008 for grant of pension. Thereafter, the appellant filed his detailed representation before the Hon’ble President of India on 07.11.2008 raising his grievance. The Presidential Secretariat vide Letter No. P1B 2981 dated 14.11.2008 directed the Secretary, Financial Sector, Ministry of Finance, Government of India, New Delhi to inquire into the matter. In absence of any communication, the appellant vide letter dated 15.01.2009 wrote a letter to the Secretary, Financial Sector, Ministry of Finance, New Delhi for taking appropriate action. In absence of any positive response, he again submitted his petition on 04.04.2009 before the Hon'ble President of India making his submission that he did not opt for resignation rather for voluntary retirement and he should be covered under Chapter V Rule 31 of LIC Pension Rules instead of Chapter IV Rule 23.

3. Being aggrieved and dissatisfied by the action of the respondent-L.I.C., the appellant filed C.W.J.C. No. 11678 of 2009 for the following reliefs:

> "1. That the petitioner above named craves indulgence of this Hon'ble Court for issuance of a writ preferably in the nature of Mandamus commanding and directing the respondents concerned to pay the petitioner pension and other due retiral benefits as the petitioner after completion of more than 20 years of qwualifying service under the Respondent L.I.C. of India has applied for voluntary retirement on 07.07.2006 while posted as A.A.O., L.I.C. of India, Jhanjharpur, Branch under the Control of Respondents No. 6 and 7 but due to inadvertence and innocence he has used the word resignation in place of voluntary retirement in his application dated 07.07.2006 which was subsequently been accepted by the competent authority and in lieu thereof even Gratuity and P.F. amounts have been granted to the petitioner but the pension is not being fixed / paid by the Respondents. And/or any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of this case.
> 2. That the main points for consideration of this Hon'ble Court in the instant matter is as to whether the action of the

> Respondents in not paying the petitioner pension despite having rendered more than 20 years of qualifying service more so in the background that the same very authorities have granted Gratuity and provident Fund to the petitioner treating him to be retired employee, is illegal, improper, unjust, arbitrary, malafide, malacious, against the service rules and inhuman or not?"

4. This Court vide order dated 24.11.2022 had passed the following order:

> "Heard learned counsels for the respective parties.
>
> Learned counsel for the respondents/L.I.C. is hereby directed to apprise this Court with reference to scheme of voluntary retirement in the L.I.C. so as to examine whether resignation of the appellant could be converted into voluntary retirement or not?"

5. Learned counsel appearing on behalf of the appellant submitted that the appellant after completing 20 years of service submitted his application dated 06.07.2006 before the Zonal Manager, Kolkata intending for his 'Voluntary Retirement' but he had used the word 'Resignation' inadvertently. The appellant had joined as an Assistant in Life Insurance Corporation of India at Jhanjharpur Branch on 07.03.1985 and was promoted to the post of Assistant Administrative Officer (A.A.O.) in December, 1999 and on the date of application dated 06.07.2006, he had already completed more than 20 years of his service which qualifies him for pension. However, the said fact was not considered by the respondent authorities in spite of his repeated requests made in this regard vide letter dated 08.06.2007, 10.12.2007 and

19.05.2008. The appellant was forced to seek information under Right to Information Act and in response thereto vide letter dated 03.11.2007 communicated by the Office of Chairman giving detailed calculation with respect to Rs.2,65,874/- on account of gratuity which was shown adjusted in different heads. The appellant filed an appeal before the Chairman on 10.12.2007 against the information of non-grant of pensionary benefit, communicated to him vide letter dated 29.10.2007. Learned counsel further submitted that since the appellant had completed more than 20 years of service, his case should have been treated under Chapter V, Rule 31 of the LIC Pension Rules, 1995 in place of Chapter IV Rule 23. Once the respondents have calculated and granted the amount of gratuity and provident fund and on the basis of aforesaid submission, he submits that the resignation made by the appellant is required to be treated as 'Voluntary Retirement'. He further submitted that learned Single Judge has not considered the long services rendered by the appellant which entitles him for pensionary benefits in terms of Chapter V Rule 31 and not in terms of Chapter IV Rule 23 of the LIC Employee Pension Rules, by committing error of record that resignation tendered by the appellant in his application dated 06.07.2006 reflects the mind of the person. Learned counsel submitted that the learned Single Judge ought to have not treated the word 'resignation' considering the mental status of the appellant who was facing several family problems. The appellant had no occasion to seek resignation from the post of Assistant Administrative Officer (A.A.O.) from the organization.

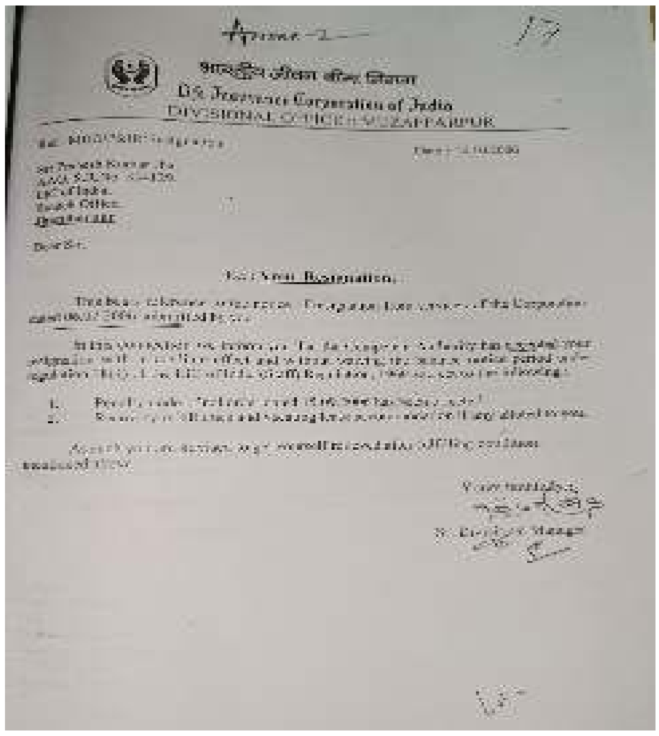
6. Per contra, learned counsel appearing on behalf of the respondent submitted that the appellant on his own had written application on 06.07.2006 tendering his resignation which was accepted by the competent authority. Thereafter, the appellant left his office on 23.09.2006 without taking permission. Appellant had admitted that gratuity of Rs.2,65,874/- granted to him has been adjusted in different heads and the provident fund amount has already been paid to the appellant. It is further submitted that once the resignation of the appellant has been accepted by the competent authority under Rule 18(1) of the LIC of India (Staff) Rules, 1960, the appellant cannot be allowed to be given the benefit of voluntary retirement.

7. Heard the respective counsels for the parties.

8. Undisputed facts of the case are that the appellant was appointed on 01.02.1985 as an Assistant in the Life Insurance Corporation of India and he was posted as an Assistant at LIC of India, Jhanjharpur Branch on 07.03.1985.

His services were confirmed on 01.06.1985 and he was promoted to the post of Assistant Administrative Officer (A.A.O.) in December, 1999. The appellant had submitted an application dated 06.07.2006 before the Zonal Manager, Kolkata through proper channel by which he tendered his resignation from services. The letter was forwarded to the Manager, LIC of India, Muzaffarpur and a copy of the said letter was communicated to him by the Manager, LIC of India, Muzaffarpur Branch on 07.07.2006. The resignation of the appellant was accepted by the competent authority and the same was communicated to him by the Sr. Divisional Manager, LIC of India, Muzaffarpur vide letter dated 14.10.2006. Thereafter, the appellant sought several information under Right to Information Act and had also approached the President of India for redressal of his grievance. In absence of any response to his claim, the appellant was forced to file C.W.J.C. No. 11678 of 2009 which was dismissed by the learned Single Judge vide order dated 07.03.2018. Perusal of records reveals that the appellant has rendered his services in the organization for more than 20 years. The core issue involved in the present case is that whether the appellant is entitled to claim pension even though he resigned from service on his own violation, if so, whether his claim on this account has been barred by any laws.

9. The appellant had submitted his resignation on 06.07.2006 before the Sr. Divisional Manager, Divisional Office, Muzaffarpur who vide letter dated 14.10.2006 had informed as under:



भारतीय जीवन बीमा निगम
Life Insurance Corporation of India
DIVISIONAL OFFICE : MUZAFFARPUR

Dear Sir,

Re: Your Resignation.

[illegible]

1. [illegible]
2. [illegible]

[illegible]

Yours faithfully,

Sr. Divisional Manager

10. From perusal of the letter above, it appears that the appellant could get relieved after fulfilling the above mentioned two conditions. The appellant vide letter dated 22.09.2006 had informed that he had no option than to keep himself absent from office from 23.09.2006 due to family problem and without intention he has used the word ‘Resignation’ in place of ‘Voluntary Retirement’.

11. It would be relevant to reproduce Rule 23 which is contained in Chapter IV of the LIC of India (Employees) Pension Rules, 1995.

> "23. Forfeiture of services:- Resignation or dismissal or removal or termination of compulsory retirement of an employee from the service of the Corporation shall entail forfeiture of his entire post service and consequently shall not qualify for the pensionary benefits."

Rule 31 contained in Chapter V of the LIC of India (Employees) Pension Rules, 1995 provides for pension on voluntary retirement. The same is reproduced as follows:

> "31. Pension on voluntary retirement - (1) At any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than ninety days, in writing, to the appointing authority, retire from service:
>
> Provided that this sub-rule shall not apply to an employee who is on deputation unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year:
>
> Provided further that this sub-rule shall not apply to an employee who seeks retirement from 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.
>
> (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) (a) An employee 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 ninety days giving reasons therefor;
>
> (b) on receipt of a request under clause(a), the appointing authority may, subject to the provisions of sub-rule (2), consider such request for the curtailment of the period of notice of ninety days on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of ninety days on the

condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of ninety days.

(4) An employee, who has elected to retire under this rule and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for such withdrawal shall be made before the intended date of his retirement.

(5) The qualifying service of an employee retiring voluntarily under this rule shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty-three years and it does not take him beyond the date of retirement.

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

The provision of Rule 18(1) of the LIC of India (Staff) Rules, 1960 is reproduced as under:

"Determination of Service:
18. (1) An employee, other than an employee on probation or an employee appointed on a temporary basis, shall not leave or discontinue his service in the Corporation without first giving notice in writing to the competent authority of his intention to leave or discontinue the service. The period of notice required shall be-

(a) three months in the case of an employee belonging to Class I;

(b) one month in the case of other employees.

Provided that such notice may be waived in part or in full by the competent authority at its discretion. In case of breach by an employee of the provisions of the sub-regulation, he shall be liable to pay the Corporation as compensation a sum equal to his salary for the period of notice required of him, which sum may be deducted from any moneys due to him."

12. The facts reveal that the appellant has actually completed more than 20 years of his services which qualifies him for full pension and he had intended to seek voluntary retirement. From perusal of the Rule 18 of LIC of India (Staff) Rules, 1960, it is apparent that it does not dissimulate between the termination of service by way of resignation on the one hand and voluntary retirement on the other, or distinguish one from the other. Significantly, the Regulation did not contain provision for voluntary retirement and it was for this reason that the Pension Rules of 1995 provides for it under Rule 31.

13. In the facts of the present case, we find that the appellant had completed 20 years of qualifying service and had given notice of not less than 90 days in writing to the appointing authority of his intention to leave the service and the appointing authority had accepted notice of the appellant and relieved him from service on 23.09.2006. The respondents have accepted the fact that the appellant has not been paid pension under the Rule of LIC of India (Staff) Rules, 1960 which is contrary to the Rule 18.

14. From the pleading made in the writ petition as well as from the counter affidavit, it appears that the appellant has made his statement that he did not intend to resign rather he had opted for his voluntary retirement.

15. The object of the Pension Rule is to extend benefits to a class of people to tide over the crisis and vicissitudes of old age.

16. The respondent authority ought to have not deprived the pensionary benefit merely on the technicality to the extent that the appellant has used the word 'Resignation' from service in spite of the appellant having served for about 20 years.

17. One of the basic distinction between resignation and voluntary retirement is that in case of resignation it can be tendered at any time, but in 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 resignation, permission or notice is not mandated, while in case of voluntary retirement, 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.

18. The general purpose of 1995 Pension Scheme, read as a whole, is to grant pensionary benefit to employee, who

had rendered service in the Insurance Company and had put in the qualifying service entitling him for pensionary benefit. The pension scheme cannot be construed so as to deprive an employee of Insurance Company who had put in the qualifying service for pension and had voluntarily given up his service after serving 90 days notice in accordance with the provision of the scheme and his notice was also accepted by the appointing authority.

19. The ends of justice obligates as to protect the fundamental right of a citizen guaranteed under Article 14 of the Constitution of India by not discriminating the beneficiary within the class. The Hon'ble Supreme Court in the case of **Asger Ibrahim Amin Vs. Life Insurance Corporation of India** reported in **(2016) 13 SCC 797,** has held that "The State being a model employer should construe the provisions of a beneficial legislation in a way that extends the benefit to its employees, instead of curtailing it."

20. We thus applying the principle of law as laid down by the Hon'ble Apex Court in the case of **Asger Ibrahim Amin (supra)** hold that the resignation tendered by the appellant, in essence, was voluntary retirement within the ambit of Rule 31 contained in Chapter V of the LIC of India (Employees) Pension Rules, 1995. Accordingly, acceptance of

resignation of the appellant is to be read as acceptance of voluntary retirement. The appellant is entitled for pension along with interest accrued thereupon as provided in the 1995 Pension Rules. The arrears of pension should be paid to the appellant in one installment within a period of three months and remaining amount calculated on any other account payable to the appellant must be paid within further period of four months from the date of such request made by the appellant.

21. The impugned judgment passed by the learned Single Judge is accordingly set aside and the appeal stands allowed in terms of the above direction, however, the parties shall bear their respective costs.

**(P. B. Bajanthri, J)**

**( Purnendu Singh, J)**

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