



*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 16th May, 2023.
Judgment delivered on: 2nd June, 2023.

W.P.(C) 11211/2017

KRISHAN KUMAR SINGH

..... Petitioner

versus

UNION OF INDIA AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Ms. Sudha Varshney and Mr. Ankush Sharma, Advocates

For the Respondents: Mr. H.S. Dahiya, Mr. Amit Kumar and Mr. Yuv Dahiya,
Advocates

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J.

1. Petitioner has invoked writ jurisdiction of this Court seeking directions to the respondents to release pensionary benefits to him in accordance with Regulation 4 of NABARD Pension Regulations, 1993 (hereinafter referred to as the Regulations).

2. Let us have a quick glance over the facts.



3. Petitioner had earlier worked in Indian Army as Clerk (General Duty) from 22.12.1972 to 14.02.1982 (nine years and 54 days).
4. After leaving Indian Army, he joined National Bank for Agriculture and Rural Development (hereinafter referred to as 'NABARD') on 29.10.1984.
5. His previous service rendered in Indian Army was also duly considered and acknowledged and he was even granted 'family allowance' for such past service.
6. He, however, tendered resignation on 01.08.1996. He contends that since he was in the government service for more than 21 years, inclusive of his said stint in Indian Army, he was entitled to pensionary benefits. According to him, as per Regulation 4 of the Regulations also, he was entitled to get pension on completion of mere 10 years of service.
7. His such resignation was duly accepted by NABARD and thus, he ceased to be in the service of NABARD with effect from 06.09.1996.
8. There was exchange of correspondence between him and NABARD on release of pensionary benefits but he was apprised that he was not eligible for grant of pension as his entire service stood forfeited on account of the fact that he had resigned.
9. Petitioner kept on sending various letters and representations from time to time and since he did not get any positive reply, he,



eventually, sent a legal notice dated 16.12.2014 under Section 80 CPC to NABARD. In such notice, he, *inter alia*, claimed that he was compelled by some officers of NABARD to submit unconditional resignation. According to him, despite such resignation, he was eligible to get pensionary benefits. By virtue of aforesaid legal notice, he called upon NABARD to pay due amount within two weeks along with interest and other incidental charges.

10. Such legal notice was replied by NABARD and in its reply dated 09.01.2015, it was reiterated that in terms of Regulation 18 of the Regulations, in case of resignation, the entire past service stood forfeited and consequently, he was not entitled to any pension. It was also informed to him that as per Rule 19 (3A) of NABARD Staff Rules 1982, no employee could qualify for pension unless he had completed 20 years of qualifying service.

11. It is in the aforesaid backdrop that he has filed the present writ petition seeking following relief: -

“a) Issue an appropriate writ or order to set-a-side the impugned order dated 09.01.2015 passed by the respondent no.4 and impugned order dated 31.05.1997 which was issued in utter violation of the principles of natural justice as well as constitutional mandates.

b) To direct the respondents authorities to pay the entire arrears of pension admissible to the petitioner as per the Regulations with effect from the date of his resignation 01.08.1996 till the date of actual payment along with interest at the rate of 24% per annum in



view of Regulation 4 of NABARD Pension Regulations, 1993.

c) Declare that the word "Resignation" used in Regulation 18 may be declared to be unreasonable, void, unconstitutional and ultra vires to Article 14 of the constitution of India."

12. As per counter affidavit submitted by Respondents No. 2 to 4, the petitioner had put in 11 years and 10 months of service with NABARD and on the basis of his resignation, he was relieved on 06.09.1996. It is reiterated that since he had resigned, he became ineligible for grant of any pension as his 'entire service' stood forfeited in terms of Regulation 18 of the Regulations. It is also claimed that the petitioner is guilty of delay and laches as despite the fact that he had resigned in the year 1996, writ petition has been filed after a gap of more than 20 years. It is, however, admitted that as per Regulation 4 of the Regulations, there is a provision for grant of pension after completion of 10 years of service but it is supplemented that case of the petitioner is not covered under the aforesaid Regulation as he had not retired from the service but had resigned. It is thus claimed that petitioner is not entitled to any pension and none of his legal rights were infringed for which he could have invoked extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

13. Rejoinder has been filed by the petitioner reiterating the averments made in the writ petition and controverting the stand taken in the counter.



14. The question posed to us is very simple and short, that is, whether an employee who tenders an unconditional resignation is entitled to pension in view of Regulation 18 of the Regulations.

15. Ms. Sudha Varshney, learned Counsel for petitioner has submitted that if the past service rendered in the Indian Army is also considered, it is admitted fact that the petitioner has rendered total service of more than 20 years. According to her, petitioner was kept in dark and was never made aware that he would be forfeiting his pension in case he was to resign. She has also argued that petitioner was rather misled and it was only on account of persistent harassment and insult by some senior officers of NABARD that he had to resign and in such a peculiar situation, resignation should be rather considered as a case of voluntary retirement. According to her, the provisions must be construed in a beneficial manner and to advance the benevolent objective behind grant of pension particularly for the petitioner who has, admittedly, put in qualifying service. Ms. Varshney has further contended that petitioner could not have been deprived of pensionary benefits merely because of the fact that he had submitted resignation. She has also argued that the connotation and impact of 'voluntary retirement' and 'resignation' is same and similar, supplementing that it was only on account of the harassment and insult by the senior officers that he had, inoffensively, submitted a letter of resignation. He merely wanted to leave NABARD knowing fully well that he had already become eligible to get pensionary benefit and, therefore, in such a situation, his resignation should rather be treated



as a case of 'voluntary retirement'. According to her, had he worded his resignation letter differently and had he been actually given voluntary retirement, NABARD would have certainly released his pensionary benefit and, therefore, retiral benefits should not be denied, keeping in mind the fact that he has admittedly completed qualifying service of 20 years and was eligible to seek voluntary retirement.

16. Strong reliance has been placed on *Asger Ibrahim Amin Vs. Life Insurance Corporation of India*: (2016) 13 SCC 797 and *M.L. Patil (Dead) Through LRs Vs. The State of Goa and Anr.*: 2022 SCC OnLine SC 685.

17. Let us refer to the relevant Regulations and Rules of NABARD Pension Regulation, 1993 and NABARD Staff Rules 1982. These are as under: -

NABARD Pension Regulation

Regulation 4: Pension will be payable on retirement to a full-time employee and to a part-time employee, on part-time work exceeding thirteen hours per week, provided they have completed a minimum service of ten years. The requirement of minimum service shall not be applicable for drawing Family Pension in the case of an employee who dies while in service.

Regulation 18: Resignation or dismissal or termination of an employee from the service shall entail forfeiture of his entire past service and consequently shall not qualify for pension payment.



NABARD Staff Rules

Rule 19 (3A): (3A) Without prejudice to sub-rule (3), an employee may voluntarily retire after giving to the Competent Authority three months' notice in writing provided he has completed 20 years of service if he is not governed by National Bank for Agriculture and Rural Development Pension Regulations, 1993 and 20 years of qualifying service as defined in the National Bank for Agriculture and Rural Development Pension Regulations, 1993, if he is governed by the said Regulation ; provided that this sub-rule shall not apply to an employee who is on deputation or study leave abroad, unless, after having been transferred or having returned to India he has resumed the charge of the post in India and 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.

18. There is no dispute about the service tenure which the petitioner had in Indian Army or for that matter in NABARD.

19. Let us straightway come to the resignation letter dated 01.08.1996 which reads as under: -

*“Mumbai
01.08.96*

*The General Manager
National Bank for Agriculture
And Rural Development*

PATNA
Staff-Group ‘B’-Resignation



Refer to your letter No. NB/Pat/Staff 570/PAS-2/96-97 dated 05 July 1996. I hereby tender my unconditional resignation from Bank Services as at close of business of 6.9.1996. Relieving order may be issued to me at the undernoted address and my dues etc. may be settled expeditiously: -

*K.K. Singh
A/14 Mangal Darshan Society
PO:-Jadeshwar
Bharuch
392011
GUJARAT*

*Yours faithfully
(K.K. Singh) ”*

20. It is very much obvious from the bare perusal of the aforesaid letter that the petitioner had tendered his ‘unconditional’ resignation. There is nothing mentioned therein which may even remotely indicate that he had opted for voluntary retirement. Admittedly, his such resignation was eventually accepted and the communications sent by NABARD in this regard are also not disputed. Reference be made to letters dated 16.08.1996 (Annexure-P-12) and 11.02.1998 (Annexure-P-13) sent by NABARD to the petitioner.

21. According to petitioner, he had not resigned but voluntary retired.

22. However, his such contention does not hold any ground in view of the contents of his own letter.



23. He, in no uncertain terms, tendered unconditional resignation.

24. His contention that he had to resign on account of some harassment does not hold any ground. Moreover, no particulars in this regard have been submitted. Such contention is totally unsubstantiated and is in the air. Petitioner is not an illiterate person. He had earlier served in Indian Army at clerical level. He had substantial service in NABARD also. It cannot be imagined that he did not know the difference between “resignation” and “voluntary retirement” which is as obvious as the difference between chalk and cheese. Even if the allegation of harassment from his seniors were to be accepted, nothing prevented him from seeking voluntary retirement.

25. It will be useful to refer to ***Union of India Vs. Abhiram Verma:*** 2021 SCC Online SC 845 in which, the difference between resignation and voluntary retirement was elucidated by the Supreme Court in Para-13 & Para-14. These read as under: -

“13. Even, there is a distinction between the “resignation” and “voluntary retirement”. A person can resign at any time during his service, however, an officer cannot ask for premature/voluntary retirement unless he fulfils the eligibility criteria.

14. This Court had an occasion to consider the distinction between “resignation” and “voluntary retirement” in LIC v. Shree Lal Meena [LIC v. Shree Lal Meena, (2019) 4 SCC 479 : (2019) 1 SCC (L&S) 713], which has been subsequently followed by this Court in BSES Yamuna Power Ltd. [BSES Yamuna Power Ltd. v. Ghanshyam Chand



Sharma, (2020) 3 SCC 346 : (2020) 1 SCC (L&S) 520] In para 22, it is observed and held as under : *(LIC case [LIC v. Shree Lal Meena, (2019) 4 SCC 479 : (2019) 1 SCC (L&S) 713] , SCC pp. 491-92)*

“22. The principles in the context of the controversy before us are well enunciated in the judgment of this Court in RBI v. Cecil Dennis Solomon [RBI v. Cecil Dennis Solomon, (2004) 9 SCC 461 : 2004 SCC (L&S) 737] . On a similar factual matrix, the employees had resigned sometime 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: (SCC pp. 467-68, para 10

‘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.”

26. Right here, we may also like to mention that learned counsel for the petitioner has strongly relied upon ***Asger Ibrahim Amin*** (supra). There are two important aspects which we need to mention right here in respect thereto.

27. Firstly, in said case of ***Asger Ibrahim Amin*** (supra), there was no provision for voluntary retirement when the concerned employee had resigned. In such peculiar factual matrix, the Hon’ble Supreme Court had eventually observed that the termination of service of such employee, in essence, was voluntary retirement and, therefore, the so called resignation tendered by said employee was treated as voluntary retirement and the employee was held entitled for pension. It was observed that he could not have been deprived of the pension benefits merely because he had styled his termination of service as resignation. In the present case, admittedly, when the resignation was tendered, there was already a provision of seeking voluntary retirement.

28. Secondly and more importantly, said judgment does not hold good any longer as it has already been overruled. We may refer to ***BSES Yamuna Power Ltd. Vs. Ghanshyam Chand Sharma and Anr.***: (2020) 3 SCC 346 wherein the situation was almost similar. The



petitioner in that case had also sought pensionary benefits which were allowed to be given by this Court. The department challenged such order before the Supreme Court. In that case also, the concerned employee had tendered his resignation which had been accepted by the employer. When he asked for pensionary benefits, these were denied on two grounds. Firstly, he had not completed 20 years of qualifying service making him ineligible for grant of pension and secondly, in any case, the employee had forfeited his past service as he had resigned and, therefore, could not claim any pensionary benefits. The Supreme Court noted that while pension scheme did form beneficial legislation in delegated form, a beneficial construction could not run contrary to the express provision and that issue of pension cannot be dealt with on a 'charity principle' when the legislature in its wisdom had brought forth certain beneficial provisions in the form of 'pension regulations.' Supreme Court went on to hold as under:-

“13. The view in Asger Ibrahim Amin [Asger Ibrahim Amin v. LIC, (2016) 13 SCC 797 : (2015) 3 SCC (L&S) 12] was disapproved and the Court held that the provisions providing for voluntary retirement would not apply retrospectively by implication. In this view, where an employee has resigned from service, there arises no question of whether he has in fact “voluntarily retired” or “resigned”. The decision to resign is materially distinct from a decision to seek voluntary retirement. The decision to resign results in the legal consequences that flow from a resignation under the applicable provisions. These consequences are distinct from the consequences flowing from voluntary retirement and the two may not be



substituted for each other based on the length of an employee's tenure.

14. In the present case, the first respondent resigned on 7-7-1990 with effect from 10-7-1990. By resigning, the first respondent submitted himself to the legal consequences that flow from a resignation under the provisions applicable to his service. Rule 26 of the Central Civil Service Pension Rules, 1972 (the CCS Pension Rules) states that:

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

Rule 26 states that upon resignation, an employee forfeits past service. We have noted above that the approach adopted by the Court in Asger Ibrahim Amin [Asger Ibrahim Amin v. LIC, (2016) 13 SCC 797 : (2015) 3 SCC (L&S) 12] has been held to be erroneous since it removes the important distinction between resignation and voluntary retirement. Irrespective of whether the first respondent had completed the requisite years of service to apply for voluntary retirement, his was a decision to resign and not a decision to seek voluntary retirement. If this Court were to re-classify his resignation as a case of voluntary retirement, this would obfuscate the distinction between the concepts of resignation and voluntary retirement and render the operation of Rule 26 nugatory. Such an approach cannot be adopted. Accordingly, the finding of the Single Judge that the first respondent “voluntarily retired” is set aside.”



29. Thus, when any employee resigns, he takes a conscious and deliberate decision. Seeking voluntary retirement and resigning might be voluntary in nature but these operate differently.

30. In the aforesaid judgment of **BSES Yamuna** (supra), concerned employee was governed by Rule 26 of Central Civil Services (Pension) Rules 1972 which also provided that resignation would entail forfeiture of past service. The provision herein is also virtually *pari materia*. Thus, it is totally immaterial and inconsequential whether petitioner had completed requisite qualifying service to apply for voluntary retirement as he had chosen to resign. He never sought voluntary retirement and there is no material which may persuade us to assume his 'resignation' as 'voluntary retirement'. Such construction and assumption is neither manifest from the record nor permissible in the eyes of law as it would make the provision of Regulation 18 of the NABARD Pension Regulations 1993 redundant and non-est.

31. It is also not a case where the petitioner had sought voluntary retirement, which was denied.

32. Be that as it may, the question of qualifying service, evidently, pales into insignificance as consequent upon his voluntary resignation, his entire past service stood forfeited and, therefore, he was obviously not entitled to any pensionary benefit. The petitioner has also failed to bring on record any material which may indicate that the use of word "resignation" in Regulation 18 is *ultra vires* or unreasonable.



33. Admittedly, pension is a continuous cause of action and delay in approaching the Court may not justify its denial but we are not called upon to touch the same as the petition lacks any substance.

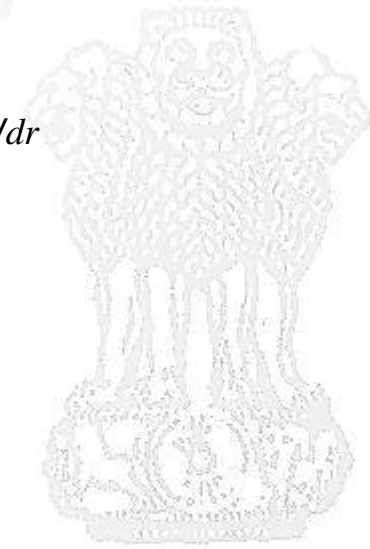
34. For the above reason, we do not find any merit in the writ petition. Same is accordingly dismissed.

35. No order as to costs.

MANOJ JAIN, J

SANJEEV SACHDEVA, J

2nd June, 2023/dr



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