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

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Date of Decision: 3rd July, 2024

+ W.P.(C) 2687/2021

SASPAL SINGH

.....Petitioner

Through: Mr. Rajesh Tyagi, Advocate.

versus

PUNJAB & SIND BANK AND ANR.

.....Respondents

Through: Ms. Kittu Bajaj, Advocate.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India challenging order dated 07.03.2020, passed by Respondent No.2, whereby Petitioner's representation dated 31.07.2018 seeking pensionary benefits has been rejected on the ground that the resignation tendered by him entails forfeiture of his entire past service. Writ of mandamus is sought for a direction to the Respondents to grant pensionary benefits to the Petitioner taking into account his long, continuous and unblemished service of 32 years.

2. Factual matrix to the extent relevant and necessary and emerging from the writ petition is that Petitioner was appointed to the post of Clerk with Punjab & Sind Bank/Respondent No.1 in January, 1977 and worked continuously and uninterruptedly for a period of 32 years. Intending to take voluntary retirement, Petitioner submitted an application dated 08.10.2008



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albeit in the form of a resignation, since being a Contributory Provident Fund Optee ('CPF Optee'), there was no provision to apply for voluntary retirement. At the time when the application was submitted, settlement talks between the Employees' Union of the Banks and the Managements of different Banks were in the process of being finalized for introducing the Second Pension Option and persons like the Petitioner, who were Provident Fund Optees, were to be granted second option to apply for pension in lieu of Provident Fund, after finalization of the scheme.

3. As per the Petitioner, in this backdrop, Petitioner was advised by Respondent No.1 to seek conditional resignation. Accordingly, Petitioner while making the application unambiguously stated that he was a CPF Optee and was tendering resignation in lieu of a request for voluntary retirement and in case any further option for pension was allowed retrospectively, his resignation be treated as request for voluntary retirement, so that his period of service be treated as qualifying service for computation of pension under the Pension Rules. The conditional resignation of the Petitioner, with all the caveats was accepted by the Respondents vide letter dated 09.01.2009 and Petitioner was relieved with effect from the same day.

4. Memorandum of Settlement, incorporating the Second Pension Option was finalized between the Union of Banks' Employees and the Indian Bank Association on 27.04.2010 and as required under the settlement, Petitioner duly submitted his option for pension in lieu of Provident Fund on 05.10.2010. However, despite completing all formalities, Respondents did not release the pensionary benefits to the Petitioner. In December, 2010, letter was issued by the Respondents to the Petitioner asking him to submit his option for joining the Pension Scheme in the



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required format, which the Petitioner did, within the stipulated time. Several representations made by the Petitioner for release of pensionary benefits did not elicit a positive response and constrained by the circumstances, Petitioner filed a writ petition before this Court bearing W.P.(C) No.6539/2019 seeking a direction for grant of pension. Writ petition was disposed of by the Court vide order dated 31.05.2019 directing Respondent No.1 to decide the representation dated 31.07.2018 by passing a speaking order and granting liberty to the Petitioner to challenge the same in case he was still aggrieved. Pursuant to the said order, Respondent No.1 decided the representation and rejected the same vide order dated 07.03.2020, which is impugned herein, holding that Petitioner was not entitled to pension since his entire past service was forfeited on account of the resignation tendered by him.

5. Learned counsel for the Petitioner contends that Petitioner had tendered conditional resignation stating unequivocally that he reserved his right to opt for the pension scheme as and when the same was finalized and implemented in future and in that eventuality, his resignation be treated as voluntary retirement, enabling him to earn pension. It was open to Respondent No.1 to reject the resignation, which was not done and instead the resignation was accepted without any reservation. It is therefore not open to Respondent No.1 to contend that the resignation cannot be treated as voluntary retirement entitling the Petitioner to pensionary benefits. It is further argued that after the pension scheme was formalized, Petitioner was asked to submit his option on 05.10.2010 for pension in lieu of Provident Fund, which he did and thus Respondent No.1 is estopped from rejecting the option.



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6. It is next contended that Petitioner has rendered more than 32 years of uninterrupted and unblemished service with Respondent No.1 which is far beyond the 20 years qualifying service required for grant of pension. Learned counsel submits that the case of the Petitioner is squarely covered by the judgment of Allahabad High Court in ***Rajender Singh v. Chairman & M.D., Punjab and Sind Bank, New Delhi & Others, Writ-A No.25432/2011*** decided on 07.02.2018, and is particularly relevant as the facts of the said case and the present case are identical and Respondent No.1 was the Respondent in the said case. Relying on judgments of the Supreme Court in ***Sheelkumar Jain v. New India Assurance Company Limited and Others, (2011) 12 SCC 197*** and ***Asger Ibrahim Amin v. Life Insurance Corporation of India, (2016) 13 SCC 797***, the Allahabad High Court allowed the writ petition on the ground that Petitioner had admittedly rendered 32 years of service w.e.f. January, 1977 upto September, 2009 and when he chose to leave the services of the Bank, there was no option for voluntary retirement for a CPF Optee and that he had submitted his resignation with the rider that in case in future Second Pension Option became applicable retrospectively, his resignation should be considered as voluntary retirement and therefore there was no reason for the Bank not to treat his resignation as voluntary retirement in view of the law settled by the Supreme Court. It is further submitted that Respondent did not challenge the judgment, which has thus attained finality and in fact implemented the judgment granting benefits to the Petitioner therein and there is no reason to treat the Petitioner differently, who is identically placed. It is therefore urged that the resignation tendered by the Petitioner be treated as voluntary retirement and Petitioner is willing to refund whatever money he has



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received towards CPF contribution and/or the same be adjusted from the pensionary benefits that may be disbursed to him.

7. *Per contra*, learned counsel for the Respondent at the outset raises a preliminary objection to the maintainability of the petition on the ground that it is barred by delay and laches. On 24.07.2010, the Memorandum of Settlement, incorporating the Second Pension Option was finalized but the Petitioner waited for 9 years before filing the earlier writ petition and the delay is unexplained. On merits, it is urged that Petitioner had tendered resignation which entails forfeiture of past service unlike a case of voluntary retirement which though has the effect of termination of service of an employee yet entitles the employee to pension. In service jurisprudence the expressions 'voluntary retirement' and 'resignation' have different legal connotations. In the present case, Regulations governing the terms and conditions of service of the Petitioner clearly provide that on resignation, dismissal, removal, termination or compulsory retirement the employee shall forfeit past service and shall not qualify for pensionary benefits. In this context, reliance is placed on the judgment of the Supreme Court in ***Reserve Bank of India & Another v. Cecil Dennis Solomon & Another*, (2004) 9 SCC 461**. Insofar as the judgment of the Allahabad High Court in ***Rajender Singh (supra)***, relied upon by the Petitioner is concerned, learned counsel does not dispute that the judgment was not challenged by Respondent No.1 and was implemented granting benefits to the Petitioner therein.

8. Heard learned counsels for the parties and examined their rival contentions.

9. On the legal proposition canvassed on behalf of the Respondents that resignation entails forfeiture of past service, there can be no debate as this



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law is well-settled. However, Respondents cannot take support of this proposition in the present case for more than one reasons. It is not in dispute that Petitioner was a CPF Optee and at the time when he tendered his resignation on 08.10.2008, there was no option for seeking voluntary retirement for a CPF Optee. It is crucial to note that when the Petitioner submitted his resignation, it was conditional, wherein he had underscored that in case any further option for pension was allowed retrospectively, his resignation be treated as request for 'voluntary retirement' so that his period of service could be considered for computation of pension under the Pension Rules. This was in the backdrop of the fact that at that stage settlement talks were underway between the Employees' Union of the Banks and the Managements of different Banks, which ultimately did culminate into a Memorandum of Settlement between the Union of Banks' Employees and the Indian Bank Association on 27.04.2010, incorporating the Second Pension Option. In fact, Petitioner was asked to submit his option in December, 2010 for joining the Pension Scheme, which he immediately did in the prescribed format, within the stipulated time. The conditional resignation was accepted by the Respondents, without any demur or rider and therefore as rightly contended by learned counsel for the Petitioner, Respondents are estopped from treating the case of the Petitioner as one of voluntary retirement. Another crucial aspect of the matter is that an employee is entitled to seek voluntary retirement after completion of 20 years of qualifying and satisfactory service and on voluntary retirement the employee becomes entitled to pensionary benefits on account of his qualifying service. In the present case, Petitioner has admittedly rendered 32 years of service, which is far beyond the 20 years and it would be a travesty



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of justice to uphold the impugned decision whereby his 32 years long service has been forfeited and to deprive him of pension for the long, continuous, uninterrupted and unblemished service. As observed by the Supreme Court in *Asger Ibrahim Amin (supra)*, provisions of beneficial legislations should be construed in a way that extends the benefit to its employees instead of curtailing them.

10. Learned counsel for the Petitioner is right in his argument that the case of the Petitioner is squarely covered by the judgment of the Allahabad High Court in *Rajender Singh (supra)* and this case is also relevant as not only the facts are identical but the Respondents are the same i.e. Punjab & Sind Bank. In *Rajender Singh (supra)*, Petitioner was employed as a Clerk in Punjab & Sind Bank when he tendered his resignation on 24.08.2009, which was accepted by the Bank on 23.09.2009. It was the case of the Petitioner that since settlement talks between the Banks Employees' Union and Managements of different Banks were in the process of being finalized for introducing the Second Pension Option, Petitioner was advised to move a conditional application for voluntary retirement but in the form of resignation, as he could not apply for voluntary retirement, being a CPF optee. In the application tendering resignation, Petitioner had stated that he was tendering resignation and in case any future option for pension was allowed, his resignation be treated as a request for voluntary retirement so that his service could be considered as qualifying service for pension under the Pension Rules. Counsel for the Bank had opposed the petition *inter alia* on the ground that on tendering resignation, which was accepted, Petitioner's entire past service of 32 years was forfeited, disentitling him to pension. On these set of facts and following the judgments of the Supreme



Court in *Sheelkumar Jain (supra)* and *Asger Ibrahim Amin (supra)*, the Allahabad High Court allowed the petition and directed the Bank to reconsider the case of the Petitioner and pass appropriate orders. Relevant passages from the judgment are as follows:-

“35. Learned counsel for the petitioner on the other hand has relied upon a decision rendered in *Sheel Kumar Jain Vs. New Indian Assurance Company Ltd. AIR 2011 SC 2990* Civil Appeal No. 6013 of 2011, wherein the Supreme Court after considering judgments rendered in *Reserve Bank of India Vs. Cecil Dennis Soleman and Uco Bank Vs. Sanwer Mal* observed thus:-

“7. We have perused the decisions of this Court cited by learned counsel for the respondents. In *Reserve Bank of India & another Vs. Cecil Dennis Soloman & another (supra)* employees of the Reserve Bank of India had tendered their resignations in 1988 and were getting superannuation benefits under the provident fund contributory provisions and gratuity schemes. Subsequently, the Reserve Bank of India Pension Regulations, 1990 were framed. The employees who had tendered resignations in 1988 claimed that they were entitled to pension under these new Pension Regulations and moved the Bombay High Court for relief and the High Court held that the Reserve Bank of India was legally bound to grant pension to such employees. The Reserve Bank of India challenged the decision of the Bombay High Court before this Court and this Court held that as the employees had tendered resignation which was different from voluntary retirement, they were not entitled to pension under the Pension Regulations. Similarly, in *UCO Bank & Ors., etc. v. Sanwar Mal, etc. (supra)* Sanwar Mal, who was initially appointed in the UCO Bank on 29.12.1959 and was thereafter promoted to Class III post in 1980, resigned from the service of the UCO Bank after giving one month's notice on 25.02.1988. Thereafter, the UCO Bank (Employees') Pension Regulations, 1995 were framed and Sanwar Mal opted for the pension scheme under these regulations. The UCO Bank declined to accept his option to admit him into the pension scheme. Sanwar Mal filed a suit for a declaration that he was entitled to pension under the Pension Regulations and for a mandatory injunction directing the UCO Bank to make payment of arrears of pensions along with interest. The suit was decreed and the decree was affirmed in first appeal and thereafter by the High Court in second appeal. The UCO Bank carried an appeal to this Court and this Court differentiated "resignation" from "voluntary retirement" and allowed the appeal and set aside the judgment of the High Court. In these two decisions, the



Courts were not called upon to decide whether the termination of services of the employee was by way of resignation or voluntary retirement. In this case, on the other hand, we are called upon to decide the issue whether the termination of the services of the appellant in 1991 amounted to resignation or voluntary retirement.”

(emphasis supplied)

36. The Supreme Court after distinguishing **Reserve Bank of India Vs. Cecil Dennis Soleman** (*supra*) and **UCO Bank** (*supra*) considered the Regulations. The Supreme Court considered the facts of the case and held that at the time when the appellant **Sheel Kumar Jain** had served a letter dated 16.9.1991 saying that he would like to resign from his post and requesting the General Manager to treat the letter as three months notice and to relieve him from his service. The services of the appellant were governed by the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Schemes 1976, which provided that a member of the Development Staff shall not leave or discontinue his services without first giving a three months 23 notice in writing to the Appointing Authority. Clause 5 of the said Regulations of 1976 did not make any distinction between resignation or voluntary retirement and it only provided that an employee, who wanted to leave or discontinue in service was to serve a notice of three months to the Appointing Authority. This three months notice was given and the appellant was relieved thereafter by the Competent Authority.

37. On the other hand, the Pension Scheme that was introduced in 1995 provided under clause 22 that resignation or dismissal or removal or termination or compulsory retirement of an employee would entail forfeiture of his entire past service and consequently the same shall not qualify for pension along with interest.

38. Under clause 30 it provided for pension on voluntary retirement and that any employee after completing 20 years of qualifying service, may by giving notice of not less than 90 days in writing to the Appointing Authority could retire voluntarily from service and such voluntary retirement shall become effective from the date of expiry of the said period of 90 days, unless it was rejected by the 24 Appointing Authority. An employee, who had elected to retire under clause 30 was entitled to pension.

39. The Supreme Court held that the Pension Scheme of 1995 was framed and notified only after the appellant had left the services in 1991, and therefore clauses 22 & 30 of the Pension Scheme of 1995 could not be applied to create any distinction between voluntary retirement and resignation. The appellant had completed 20 years of qualifying service and had given notice of 90 days in writing to the Appointing Authority of



his intention to leave service of the company, and therefore he was entitled for payment of retiral benefits like pension and gratuity etc.

40. The Supreme Court relied upon earlier decisions rendered by it in **Sudhir Chandra Sarkar Vs. Tata iron & Steel Corporation Ltd. AIR 1984 SC 1064** and **Union of Indian Vs. Lt. COL. P.S. Bhargava 1997 (2) SCC 28** and observed in paragraph 13 thus:-

“13. The aforesaid authorities would show that the Court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement and while construing the statutory provisions, the Court will have to keep in mind the purposes of the statutory provisions.”

41. The Supreme Court in another judgment rendered in **Asger Ibrahim Amin Vs. Life Insurance Corporation of India 2015 (6) AWC 5829** was considering the question whether the appellant was entitled to claim pension even though he had resigned from service of his own violation and held that the appellant who had resigned after reaching the age of 50 years and after serving LIC for over 23 years, would be said to have retired voluntarily.

42. The Supreme Court relied upon its earlier decision rendered in the case of **Sheel Kumar Jain (supra)** to hold that the LIC Staff Regulations of 1960 did not make any difference between resignation and retirement. The observations made by the Supreme Court in paragraphs 10 & 13 are being quoted herein below:-

“----- Under sub-clause (1) of Clause 30 of the Pension Scheme, 1995, an employee, who has completed 20 years of qualifying service, may by giving notice of not less than 90 days in writing to the appointing authority retire from service and under sub-clause (2) of Clause 30 of the Pension Scheme, 1995, the notice of voluntary retirement shall require acceptance by the appointing authority. Since 'voluntary retirement' unlike 'resignation' does not entail forfeiture of past services and instead qualifies for pension, an employee to whom Clause 30 of the Pension Scheme, 26 1995 applies cannot be said to have 'resigned' from service. In the facts of the present case, we find that the appellant had completed 20 years qualifying service and had given notice of not less than 90 days in writing to the appointing authority of his intention to leave service and the appointing authority had accepted notice of the appellant and relieved him from service. Hence, Clause 30 of the Pension Scheme, 1995 applied to the appellant even though in his letter dated 16.09.1991 to the General Manager of respondent no.1- Company he had used the word 'resign'.”



13. The aforesaid authorities would show that the Court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement and while construing the statutory provisions, the Court will have to keep in mind the purposes of the statutory provisions. The general purpose of the Pension Scheme, 1995, read as a whole, is to grant pensionary benefits to employees, who had rendered service in the Insurance Companies and had retired after putting in the qualifying service in the Insurance Companies. Clauses 22 and 30 of the Pension Scheme, 1995 cannot be so construed as to deprive of an employee of an Insurance Company, such as the appellant, who had put in the qualifying service for pension and who had voluntarily given up his service after serving 90 days notice in accordance with sub-clause (1) of Clause 5 of the Scheme, 1976 and after his notice was accepted by the appointing authority.”

(emphasis supplied)

43. Ms. Shruti Malviya has also relied upon by a decision rendered by Division Bench of this Court in **Anil Kumar Gupta Vs. State of U.P. 2015 (10) ADJ 264 (DB)** and a judgment rendered by a Coordinate Bench on 16.8.2016 27 in Writ-A No. 2322 of 2014 (Dr. Ram Kishore Shukla Vs. State of U.P. & 4 others), which are to the effect that if an employee who has rendered qualifying service of more than 20 years decides to leave his service and mentions the same as resignation, it would not disentitle such an employee from pensionary benefits which he would have otherwise become entitled to had he chosen to retire voluntarily from such service in such a case at the most the employer can adjust the amount due from such person for the notice period of three months, with the arrears of pension payable to such employee on his retirement.

44. In the case of the petitioner, he had admittedly rendered 32 years of service w.e.f. January 1977 upto September 2009. At the time when he chose to leave the services of the Bank, there was no option for voluntary retirement for a Contributory Provident Fund optee. The petitioner had therefore given one month's notice to the Bank and submitted his resignation with the rider that in case in future Second Pension Option became applicable retrospectively, then his resignation should be considered as voluntary retirement.

45. The petitioner has expressed his willingness to refund whatever he has received as Provident Fund, Contribution from the Bank as well as interest thereon, as also 56 % over and above the same as required under the Bipartite Settlement, there is no reason for the Bank not to treat his resignation as voluntary retirement in view of law settled by the Hon'ble Supreme Court as discussed herein above.



46. *The writ petition is therefore allowed. The impugned order dated 18.12.2010 is quashed.*

47. *The respondent Bank may adjust 60 days salary received by the petitioner for the period of 60 days by which his notice for voluntary retirement has fallen short in the arrears of pension, which would become admissible to the petitioner*

48. *The respondent Bank is directed to pass appropriate orders reconsidering the case of the petitioner in the light of the observations made herein above and pass appropriate orders within a period of three months from the date a certified copy of this order is produced before him."*

11. As noted above, it is not disputed by learned counsel for the Respondents that the judgment was not assailed by the Bank and was instead implemented, giving benefits of the judgment to the Petitioner therein. This Court finds no reason to permit Respondent No.1 to treat the present Petitioner differently from **Rajender Singh (supra)** as the facts of his case are identical and is persuaded to follow the judgment of the Allahabad High Court. Moreover, the said judgment is based on the judgments of the Supreme Court in **Sheelkumar Jain (supra)** and **Asger Ibrahim Amin (supra)**. It is however relevant to refer to some more observations of the Supreme Court in the aforesaid judgments.

12. In **Sheelkumar Jain (supra)**, the Supreme Court observed as under:-

"23. The 1995 Pension Scheme was framed and notified only in 1995 and yet the 1995 Pension Scheme was made applicable also to employees who had left the services of Respondent 1 Company before 1995. Paras 22 and 30 of the 1995 Pension Scheme quoted above were not in existence when the appellant submitted his letter dated 16-9-1991 to the General Manager of Respondent 1 Company. Hence, when the appellant served his letter dated 16-9-1991 to the General Manager of Respondent 1 Company, he had no knowledge of the difference between "resignation" under Para 22 and "voluntary retirement" under Para 30 of the 1995 Pension Scheme. Similarly, Respondent 1 Company employer had no knowledge of the difference between "resignation" and "voluntary retirement" under Paras 22 and 30 of the 1995 Pension Scheme, respectively.



24. Both the appellant and Respondent 1 have acted in accordance with the provisions of sub-para (1) of Para 5 of the 1976 Scheme at the time of termination of service of the appellant in the year 1991. It is in this background that we have now to decide whether the termination of service of the appellant under sub-para (1) of Para 5 of the 1976 Scheme amounts to resignation in terms of Para 22 of the 1995 Pension Scheme or amounts to voluntary retirement in terms of Para 30 of the 1995 Pension Scheme.

25. Para 22 of the 1995 Pension Scheme states that the resignation of an employee from the service of the corporation or a company shall entail forfeiture of his entire past service and consequently he shall not qualify for pensionary benefits, but does not define the term “resignation”. Under sub-para (1) of Para 30 of the 1995 Pension Scheme, an employee, who has completed 20 years of qualifying service, may by giving notice of not less than 90 days in writing to the appointing authority retire from service and under sub-para (2) of Para 30 of the 1995 Pension Scheme, the notice of voluntary retirement shall require acceptance by the appointing authority. Since “voluntary retirement” unlike “resignation” does not entail forfeiture of past services and instead qualifies for pension, an employee to whom Para 30 of the 1995 Pension Scheme applies cannot be said to have “resigned” from service.

26. 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. Hence, Para 30 of the 1995 Pension Scheme applied to the appellant even though in his letter dated 16-9-1991 to the General Manager of Respondent 1 Company he had used the word “resign”.

27. We may now cite the authorities in support of our aforesaid conclusion. In *Sudhir Chandra Sarkar v. Tisco Ltd.* [(1984) 3 SCC 369 : 1984 SCC (L&S) 540 : AIR 1984 SC 1064], the plaintiff had rendered continuous service under the respondent from 31-12-1929 till 31-8-1959 i.e. for 29 years and 8 months. He submitted a letter of resignation dated 27-7-1959 and his resignation was accepted by the respondent by letter dated 26-8-1959 and he was released from his service with effect from 1-9-1959. On these facts, a three-Judge Bench of this Court held: (SCC p. 376, para 7)

“7. ... The termination of service was thus on account of resignation of the plaintiff being accepted by the respondent. The plaintiff has, within the meaning of the expression, thus retired from service of the respondent and he is qualified for payment of gratuity in terms of Rule 6.”



28. *In Union of India v. Lt. Col. P.S. Bhargava [(1997) 2 SCC 28 : 1997 SCC (L&S) 290]* , the respondent joined the Army Dental Corps in 1960 and thereafter he served in various capacities as a specialist and on 2-1-1984 he wrote a letter requesting for permission to resign from service with effect from 30-4-1984 or from an early date. His resignation was accepted by a communication dated 24-7-1984 and he was released from service and he was also informed that he shall not be entitled to gratuity, pension, leave pending resignation and travel concession. On receipt of this letter, he wrote another letter dated 18-8-1984 stating that he was not interested in leaving the service. This was followed by another letter dated 22-8-1984 praying to the authority to cancel the permission to resign.

29. These letters were written by the respondent because he realised that he would be deprived of his pension, gratuity, etc. as a consequence of his resignation. These subsequent letters dated 18-8-1984 and 22-8-1984 were not accepted and the respondent was struck off from the rolls of the Army on 24-8-1984. On these facts, the Court held: (P.S. Bhargava case [(1997) 2 SCC 28 : 1997 SCC (L&S) 290] , SCC p. 32, para 19)

“19. ... Once an officer has to his credit the minimum period of qualifying service, he earns a right to get pension and as the Regulations stand, that right [to get pension] can be taken away only if an order is passed under Regulation 3 or 16.”

30. The aforesaid authorities would show that the court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement and while construing the statutory provisions, the court will have to keep in mind the purposes of the statutory provisions.

31. The general purpose of the 1995 Pension Scheme, read as a whole, is to grant pensionary benefits to employees, who had rendered service in the insurance companies and had retired after putting in the qualifying service in the insurance companies. Paras 22 and 30 of the 1995 Pension Scheme cannot be so construed so as to deprive of an employee of an insurance company, such as the appellant, who had put in the qualifying service for pension and who had voluntarily given up his service after serving 90 days' notice in accordance with sub-para (1) of Para 5 of the 1976 Scheme and after his notice was accepted by the appointing authority.

32. In the result, we set aside the orders of the Division Bench of the High Court in the writ appeal as well as the learned Single Judge and allow this appeal as well as the writ petition filed by the appellant and direct the respondents to consider the claim of the appellant for pension in accordance with the 1995 Pension Scheme and intimate the decision to the



appellant within three months from today. There shall be no order as to costs."

13. In *Asger Ibrahim Amin (supra)*, the Supreme Court observed as under:-

"16. What is unmistakably evident in the case at hand is that the appellant had worked continuously for over 20 years, that he sought to discontinue his services and requested waiver of three months' notice in writing, and that the said notice was accepted by the respondent Corporation and the appellant was thereby allowed to discontinue his services. If one would examine Rule 31 of the Pension Rules juxtaposed with the aforementioned facts, it would at once be obvious and perceptible that the essential components of that Rule stand substantially fulfilled in the present case. In Sheelkumar [Sheelkumar Jain v. New India Assurance Co. Ltd., (2011) 12 SCC 197] , this Court was alive to the factum that each case calls for scrutiny on its own merits, but that such scrutiny should not be detached from the purpose and objective of the statute concerned. It thus observed : (SCC pp. 206-07, paras 30-31)

"30. The aforesaid authorities would show that the court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement and while construing the statutory provisions, the court will have to keep in mind the purposes of the statutory provisions.

31. The general purpose of the 1995 Pension Scheme, read as a whole, is to grant pensionary benefits to employees, who had rendered service in the insurance companies and had retired after putting in the qualifying service in the insurance companies. Paras 22 and 30 of the 1995 Pension Scheme cannot be so construed so as to deprive of an employee of an insurance company, such as the appellant, who had put in the qualifying service for pension and who had voluntarily given up his service after serving 90 days' notice in accordance with sub-para (1) of Para 5 of the 1976 Scheme and after his notice was accepted by the appointing authority."

17. The appellant ought not to be deprived of pension benefits merely because he styled his termination of services as "resignation" or because there was no provision to retire voluntarily at that time. The commendable objective of the Pension Rules is to extend benefits to a class of people to tide over the crisis and vicissitudes of old age, and if there are some inconsistencies between the statutory provisions and the avowed objective of the statute so as to discriminate between the beneficiaries within the class, the end of justice obligates us to palliate the differences between the



two and reconcile them as far as possible. We would be failing in our duty, if we go by the letter and not by the laudatory spirit of statutory provisions and the fundamental rights guaranteed under Article 14 of the Constitution of India.

18. *RBI v. Cecil Dennis Solomon [RBI v. Cecil Dennis Solomon, (2004) 9 SCC 461 : 2004 SCC (L&S) 737] , relied upon by the respondent, although distinguishable on facts, has ventured to distinguish “voluntary retirement” from “resignation” in the following terms : (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. In Punjab National Bank v. P.K. Mittal [Punjab National Bank v. P.K. Mittal, 1989 Supp (2) SCC 175 : 1990 SCC (L&S) 143 : (1990) 12 ATC 683] on interpretation of Regulation 20(2) of the 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 [Union of India v. Gopal Chandra Misra, (1978) 2 SCC 301 : 1978 SCC (L&S) 303] 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”

(emphasis supplied)

19. *The legal position deducible from the above observations further amplifies that the so-called resignation tendered by the appellant was after satisfactorily serving the period of 20 years ordinarily qualifying or*



enabling voluntary retirement. Furthermore, while there was no compulsion to do so, a waiver of the three months' notice period was granted by the respondent Corporation. 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.

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21. *We thus hold that the termination of services of the appellant, in essence, was voluntary retirement within the ambit of Rule 31 of the 1995 Pension Rules. The appellant is entitled for pension, provided he fulfils the condition of refunding of the entire amount of the Corporation's contribution to the provident fund along with interest accrued thereon as provided in the 1995 Pension Rules. Considering the huge delay, not explained by proper reasons, on the part of the appellant in approaching the Court, we limit the benefits of arrears of pension payable to the appellant to three years preceding the date of the petition filed before the High Court. These arrears of pension should be paid to the appellant in one instalment within four weeks from the date of refund of the entire amount payable by the appellant in accordance with the 1995 Pension Rules. In the alternative, the appellant may opt to get the amount of refund adjusted against the arrears of pension. In the latter case, if the amount of arrear is more than the amount of refund required, then the remaining amount shall be paid within two weeks from the date of such request made by the appellant. However, if the amount of arrears is less than the amount of refund required, then the pension shall be payable on monthly basis after the date on which the amount of refund is entirely adjusted."*

14. In this context, I may allude to the judgment of the Karnataka High Court in ***Sri C. Narasimhappa and Others v. Vijaya Bank, W.P. Nos. 24158-160/2011***, decided on 18.04.2012, wherein Petitioners had joined the service of the Respondent Bank between 1971 and 1982 as Clerks and tendered their resignations after completing 20 years of service, which were accepted by the Bank. When Petitioners had joined the service of the Bank, there was no pension scheme and the only retiral benefits were CPF and Gratuity. Later, in a Bi-partite Agreement between the Indian Banks' Association and the Trade Unions of Bank employees, it was agreed that pension scheme would be introduced in lieu of CPF with effect from



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01.11.1993. Petitioners submitted their options for pension, which were rejected on the ground that they had tendered resignation. Relying upon the judgment of the Supreme Court in *Sheelkumar Jain (supra)* and the Division Bench of the Karnataka High Court in *Smt. Satya Srinath v. Syndicate Bank, ILR 2003 KAR 2605*, the Court allowed the petition and held that the Petitioners would be entitled to pension as per the Pension Regulations of the Respondent Bank and directed the Respondents to calculate and extend the benefit of pension to the Petitioner. Relevant paragraphs are as follows:-

“4. Though the pension regulations came into force on 1.11.1993, the implementation was delayed on account of introduction of certain clauses contrary to the settlement and agitation by the trade unions. In the circumstances, the petitioners and some of the similarly placed employees did not give their options for pension. In this connection, the matter went up to the Supreme Court. Finally on 25.2.2008, a memorandum of understanding was signed between the Indian Banks Association and the negotiating trade unions to extend similar option for pension to those who did not opt for pension when the pension regulations were implemented in the year 1995. Subsequently, on 27.4.2010 settlement was signed. Consequent to this settlement the respondent bank issued a Circular dated 7.9.2010 as per Annexure-L. In terms of this Circular petitioners submitted their options for pension within time. The respondent bank rejected the options exercised by the petitioners under the impugned endorsements M to M7 on the ground that under clause-7 in the circular, Annexure-L the petitioners who have resigned from service are not entitled for pension. Therefore the petitioners are before this court calling in question clause-7 of the circular, Annexure-L and the endorsement Annexures M to M7.

5. Heard arguments on both the side and perused the entire writ papers.

6. Clause - 7 in the circular reads as under:

"This option to join the Pension Scheme shall not be extended to those employees (Officers & Award Staff) who ceased to be in the service of the Bank in any manner other the categories mentioned herein above."

7. The Supreme Court in *Sheelkumar Jain v. New India Assurance Co. Ltd., AIR 2011 SC 2990* and it is held as under:



13. *The aforesaid authorities would show that the Court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement and while construing the statutory provisions, the Court will have to keep in mind the purposes of the statutory provisions. The general purpose of the Pension Scheme, 1995, read as a whole, is to grant pensionary benefits of employees, who had rendered service in the Insurance Companies and had retired after putting in the qualifying service in the Insurance Companies. Clauses 22 and 30 of the Pension Scheme, 1995 cannot be so construed as to deprive of an employee of an Insurance Company, such as the appellant, who had put in the qualifying service for pension and who had voluntarily given up his service after serving 90 days notice in accordance with sub-clause (1) of Clause 5 of the Scheme, 1976 and after his notice was accepted by the appointing authority.*
8. *A Division Bench of this Court in Smt. Satya Srinath vs Syndicate Bank, ILR 2003 KAR 2605 held as under:*
- In deciding the entitlement of an employee for pension and other pensionary benefits, the Court should necessarily bear in mind the well settled position in law that where an employee put in more than minimum qualifying service for pension under the relevant Regulations on the Rules, even incase of resignation after putting in the qualifying service, the employee would be entitled to pension and otherwise the rule denying the pension merely on the ground that the employee has resigned even though the employee has put in required service prescribed under the relevant Regulations or the Rules, will be violative of Article 14 postulates and the provision of Article 16 of the Constitution. In holding so, we may derive support from the judgments of the Apex Court in UNION OF INDIA v. D.R.R.SHASTRI and in UNION OF INDIA vs LT.COL.T.S.BHARGHAVA. Further the pension Regulations nowhere exclude deemed voluntarily retires from entitlement to pension. The Supreme Court in the case of COMMISSIONER OF INCOME TAX vs MYSODET PRIVATE LIMITED held that under a deemed clause unless exclusion is specific and categorical, no exclusion could be inferred or imposed or read into.*
9. *Keeping the law declared by the Apex court and this court in the decisions referred to supra, the facts in the present case are to be examined. It is not in dispute that petitioners have put in more than 20 years of qualifying service in the respondent bank. Merely because the petitioners have resigned from service is not a ground to deny the pension.*



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Therefore, the impugned clause in the circular and also the impugned endorsements are liable to be quashed.

10. Learned counsel for the respondents relying on two decisions of the Supreme Court reported in AIR 2004 SC 2135 and AIR 2004 SC 3196 contend that an employee tendering resignation not entitled for pension. These two decisions are considered and distinguished by the Supreme Court in the case of Sheelkumar Jain Vs. The New India Assurance Co. Ltd., and others, AIR 2011 SC 2990. Therefore the decision relied on by the learned counsel for the respondent will not be useful to address the controversy involved in the present case on hand.

11. For the reasons stated above, the following:

ORDER

I. Writ petitions are hereby allowed.

II. The impugned clause no.7 of Circular No 10191 dated 7.9.2010 as per Annexure-L and endorsements as per Annexures-M to M7 are hereby quashed.

III. Petitioners are entitled for pension as per the pension regulations of the respondent bank.

IV. Respondents to calculate and to extend the benefit of pension to the petitioners.”

15. In view of the aforesaid judgments, which squarely apply to the case of the Petitioner, it is held that the case of the Petitioner will in essence be a case of voluntary retirement within the four corners of the Pension Regulations of the Respondents and Petitioner will be thus entitled to pensionary benefits. Insofar as the objection of delay and laches is concerned, it is a settled law that pension is a continuing cause of action and the Petitioner cannot be non-suited on this score and in this context, I may refer to judgments of the Supreme Court in ***State of Rajasthan and Others v. O.P. Gupta, 2022 SCC OnLine SC 1248*** and ***M.L. Patil (Dead) through legal representatives v. State of Goa and Another, (2023) 1 SCC 660***.

16. Accordingly, writ petition is allowed directing the Respondents to grant pensionary benefits to the Petitioner under the Pension Regulations of



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Respondent No. 1 and release the arrears of pension to the Petitioner within two months from today, subject to the Petitioner refunding the entire amount of Respondent No.1's contribution to the Provident Fund, which he has undertaken to do. In the alternative, it is open to the Petitioner to opt to get the amount of refund adjusted against the arrears of pension. In the latter case, if the amount of arrears is more than the amount of refund required, then the balance amount will be paid by Respondent No.1. However, if the amount of arrears is less than the amount of refund required, then the pension shall be payable to the Petitioner on monthly basis from the date the entire refund is adjusted. In light of the above, impugned order dated 07.03.2020 is quashed and set aside.

17. Writ petition is allowed and disposed of in the above terms.

JYOTI SINGH, J

JULY 03, 2024/shivam