

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1422 of 1997

in

SPECIAL CIVIL APPLICATION No 2551 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements ? Yes

2. To be referred to the Reporter or not? Yes :

3. Whether Their Lordships wish to see the fair copy : YES
of the judgement? No

4. Whether this case involves a substantial question : YES
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No :

PREMJI KHANJI MASANI

Versus

REGIONAL MANAAGER

Appearance:

MR IS SUPEHIA for Appellant

MR DARSHAN M PARIKH for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE A.L.DAVE

Date of decision: 30/09/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

This appeal, which is filed under Clause 15 of the Letters Patent, is directed against judgment dated August 26, 1997 rendered by the learned Single Judge, in Special Civil Application No. 2551/97, by which prayer made by the appellant to direct the respondents to treat his resignation from service as voluntary retirement and fix his pension under Paragraph 30 of the General Insurance (Employees') Pension Scheme, 1995, is rejected.

2. The appellant was employed with United India Insurance Company as Administrative Officer in Divisional Office at Junagadh. He was not keeping good health and, therefore, he tendered resignation from service by addressing letter dated February 27, 1987 to the Regional Manager, Regional Office, Ahmedabad. A copy of the said letter is produced at Annexure-A to the petition. By the said letter, appellant requested the competent authority to accept his resignation with effect from April 1, 1987 and to treat period from March 1, 1987 to March 31, 1987 as Earned Leave. The said letter was forwarded to the Chairman-cum-Managing Director of the United India Insurance Co. Ltd., who accepted the resignation of the appellant with effect from April 1, 1987. The intimation given by the Regional Manager to the appellant is produced on the record of the case at Annexure-B to the petition. In exercise of powers conferred by section 17-A of the General Insurance Business (Nationalisation) Act, 1972, the Central Government has made a Scheme called "General Insurance (Employees') Pension Scheme, 1995 ("Pension Scheme" for short). The Pension Scheme has come into force on 1st day of November, 1993. As provided in Regulation-3 of the Pension Scheme, the pension scheme, inter-alia, applies to employees who were in the service of the Corporation or a Company, as the case may be, on or after the first day of January, 1986, but had retired before the first day of November, 1993. According to the appellant, he was entitled to pension in terms of the Pension Scheme and, therefore, he addressed a letter dated September 12, 1995 opting for pension under the said scheme. The respondents were of the opinion that as the appellant had resigned from service, he was not entitled to opt for pension scheme, nor entitled to join pension scheme and, therefore, his request to permit him to opt for pension under the Pension Scheme of 1995 was turned down. Thereupon, the appellant instituted Special Civil Application No. 2551/97 in the High Court and prayed to direct the respondents to fix his pension under Paragraph 30 of the Pension Scheme by treating his resignation as voluntary retirement. Another consequential relief was also claimed to the effect that action of the respondents in

not extending the benefits of voluntary retirement to him should be declared as illegal, arbitrary and unjust.

3. On service of notice, Mr. Vinay Kapur, Administrative Officer (Legal) filed affidavit-in-reply on behalf of respondent no.1 controverting the averments made in the petition. In the reply what was stressed was that the appellant had tendered resignation from service, but had not voluntarily retired under any voluntary retirement scheme and, therefore, he was not entitled to any pension under the Pension Scheme of 1995. After pointing out difference between resignation and voluntary retirement from service, what was emphasised in the reply was that the appellant having tendered resignation from service, he was not entitled to the reliefs claimed in the petition. The appellant had filed rejoinder controverting the statements made in the affidavit-in-reply and reiterating his claim which was advanced in the petition. The respondents had also filed affidavit-in-sur-rejoinder to the rejoinder filed by the appellant. However, we think that it is not necessary to refer to the averments made in rejoinder and affidavit-in-sur-rejoinder in detail while deciding the appeal.

4. After hearing the learned Counsel for the parties, learned Single Judge concluded that the appellant having resigned from service, was not entitled to pension under Paragraph 30 of the Pension Scheme, which deals with voluntary retirement by an employee from service. On interpretation of Regulation-22 of the Pension Scheme, learned Single Judge held that resignation by the appellant from service has entailed forfeiture of his entire past services and consequently the appellant is not qualified for pensionary benefits. In view of the above conclusions, the learned Single Judge dismissed the petition by judgment dated August 26, 1997, giving rise to present appeal.

5. Mr. I.S.Supehia, learned Counsel for the appellant contended that resignation tendered by the appellant tantamounts to voluntary retirement, as voluntary retirement and resignation stand on the same footing and, therefore, the learned Single Judge ought to have allowed the petition. The learned Counsel drew attention of the Court to different provisions incorporated in the Pension Scheme and submitted that concept of voluntary retirement was introduced for the first time in the pension scheme with effect from November 1, 1993 and as the appellant had no alternative but to resign from service, the resignation tendered

prior to coming into force of the pension scheme, ought to have been treated as voluntary retirement of the appellant from service. What was claimed was that there is no provision in the pension scheme debarring an employee who had resigned from service, from getting benefits of pension under the said scheme and, therefore, the claim advanced by the appellant ought to have been accepted by the learned Single Judge. It was also stressed that the appellant had put in more than 26 years of qualifying service and, therefore, the claim of the appellant for pension ought to have been granted by the learned Single Judge. In support of his submissions, learned Counsel relied on the decisions rendered in the cases of (1) M/s. J.K.Cotton Spg. & Wvg. Mills Co.Ltd. Kanpur v. State of U.P. and others, A.I.R. 1990 S.C. 1808, and (2) Union of India and others v. Lt. Col. P.S.Bhargava, (1997) 2 SCC 28.

6. Mr. Darshan M. Parikh, learned Counsel for the respondents vehemently submitted that only those employees who fulfill the criteria prescribed in Regulation-3 of the Pension Scheme, are entitled to pension and as the appellant is not fulfilling the criteria, he is not entitled to claim pension at all. According to the learned Counsel for the respondents, the appellant had tendered resignation from service, but had not voluntarily retired from service as contemplated by the Pension Scheme and, therefore, the claim of the appellant for pension is totally misconceived. What was pleaded was that the appellant cannot be said to have retired voluntarily from service after coming into force of the pension scheme and as the appellant is not fulfilling the eligibility criteria laid down under the scheme, the respondents were justified in not accepting the claim of the appellant to permit him to opt for pension scheme. It was further stressed that an employee would be entitled to pension, if his case squarely falls within the purview of pension scheme and as the case of the appellant does not fall within the purview of the pension scheme, the appeal should be dismissed, more particularly in view of Regulation-22 of the Pension Scheme. Learned Counsel for the respondent relied upon (1) D.S.Nakara & ors. v. Union of India, (1983) 1 SCC 305, (2) Smt. Poonamal & others v. Union of India & Ors. (1985) 3 SCC 345, (3) State of Rajasthan v. Sevanivatrak Karamachari Hitkari Samiti, (1995) 2 SCC 117, (4) Government of Tamil Nadu & Anr. v. K.Jayaraman, AIR 1997, SC. 1332, (5) A.S.Raju v. Branch Manager, State Bank of India, Visakhapatnam (A.P.) and ors. AIR 1997 SC 2268, (6) State of West Bengal & ors. v. Ratan Beharidey & Ors., (1993) 4 SCC 62, and (7)

Jayendra R.Shah v. Gujarat Small Industries Corporation Ltd. 1997(2) GLH 939, in support of his above-referred to submissions.

7. We have heard the learned Counsel for the parties at length and have also taken into consideration different provisions of General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976 and amendments made therein as well as the Pension Scheme. Before advertng to the submissions made by the learned Counsel for the parties, we are of the opinion that it would be advantageous to refer to certain salutary provisions of the Pension Scheme. Paragraph-2 contains definitions of differnt words and expressions. As per clause (j) of Paragraph-2, 'date of retirement' means the last day of the month in which an employee attains the age of superannuation or the date on which hs is retired by the Corporation or a Company or the date on which the employee voluntarily retires. Clause (t) of Paragraph-2 defines 'retirement' to mean (i) the retirement in accordance with the provisions contained in paragraph 12 of General Insurance (Rationalisation and Revision of Pay Scales and Other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Scheme, 1974, (ii) the retirement in accordance with the provisions contained in paragraph 4 of the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976, and (iii) voluntary retirement in accordance with the provisions contained in paragraph-30 of the pension scheme. The scheme, inter-alia, applies to all the employees who were in service of the Corporation or a Company, as the case may be, on or after the first day of January, 1986, but had retired before the first day of November, 1993, on fulfilment of conditions as stipulated in Paragraph-3 of the Scheme. Chapter-IV of the Pension Scheme lays down as to what is qualifying service and according to Paragraph-14, an employee who has rendered a minimum ten years of service in the Corporation or a Company on the date of retirement, qualifies for pension subject to other conditions being fulfilled. Regulation-22 provides for forfeiture of service in certain contingencies. It lays down that resignation or dismissal or removal or retirement or compulsory retirement of an employee from the service of the Corporation or a Company shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. Chapter-V of the Pension Scheme makes mention about different classes of pension, one of which is pension on voluntary retirement as provided in Paragraph 30 of the said Scheme. According to Paragraph

30, at any time after an employee has completed 20 years of qualifying service, he may, by giving notice of not less than 90 days in writing to the appointing authority, retire from service. However, it is provided therein that if an employee 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, he is not entitled to retire voluntarily from service. As per the scheme envisaged for voluntary retirement, notice which may be given by an employee seeking voluntary retirement, is subject to acceptance by the appointing authority. Moreover, an employee, who has elected to retire voluntarily from service and has given necessary notice to that effect, is precluded from withdrawing the notice except with the specific approval of the appointing authority. The qualifying service of an employee retiring voluntarily under the pension scheme stands increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee will not exceed thirty three years and it does not take him beyond the date of retirement.

8. On consideration of different provisions of the Scheme, it becomes apparent that an employee is entitled to claim pension under the scheme only if he fulfills the criterias laid down therein. The contention that resignation tendered by the appellant should be treated as the appellant having voluntarily retired from service, cannot be accepted. The two expressions have different connotations in service jurisprudence. Regulation-2(t) of the Pension Scheme defines retirement to mean, inter-alia, voluntary retirement in accordance with the provisions contained in paragraph 30 of the Scheme. Therefore, if the cessation of service does not take place in terms of paragraph 30 of the Scheme, it cannot be termed as voluntary retirement from service. In order to constitute voluntary retirement from service, giving of notice of not less than ninety days in writing by an employee to the appointing authority and acceptance of the same by the appointing authority, are essential ingredients. Moreover, an employees who has elected to retire voluntarily and has given necessary notice to that effect to the appointing authority is precluded from withdrawing his notice, except with the specific approval of the authority. The qualifying service of an employee retiring voluntarily stands increased by a period not exceeding five years. All these elements are not present in a case where an employee resigns from service. Though under conditions of service an employee may have to give

a notice to the appointing authority in case he wants to tender resignation, he is always at liberty to withdraw the same before the resignation is accepted. On resignation being accepted, the qualifying service never stands increased by any period. Under the circumstances, resignation of an employee cannot be equated with his voluntary retirement from service. The concept of voluntary retirement as envisaged by Paragraph 30 is prospective in nature. One who has resigned from service prior to coming into force of the provisions of Pension Scheme, cannot be treated as he having voluntarily retired from service under Paragraph 30. It is relevant to notice that conditions of service enabled the appellant to resign from the service of the Corporation. Paragraph -22 makes provision for forfeiture of service. It provides that resignation or dismissal or removal or termination or compulsory retirement of an employee from the service of the Corporation or a Comapny shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. Therefore, in terms of Regulation-22 when the appellant resigned, his resignation entailed forfeiture of his entire past service rendering him disqualified for pensionary benefits. If the interpretation as canvassed by the learned Counsel for the appellant is accepted, it would amount to rewriting the pension scheme and modifying the different provisions of the said scheme, which is not permissible to a Court hearing petition under Art. 226 of the Constitution. The Court has no power to direct the authorities to grant pensionary benefits to an employee whose case is not covered by the pension scheme. Though the appellant has expressed willingness to refund the amount of contributory provident fund received by him on his resignation from service, in our view, the said willingness has no relevance when Regulation-22, inter-alia, provides that resignation of an employee from service of the Corporation shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. In view of clear provisions of the Pension Scheme, it is difficult to agree with the submission of the learned Counsel for the appellant that resignation from service which was tendered by the appellant on February 27, 1987 should be construed as the appellant having voluntarily retired from service in terms of Paragraph-30 of the Pension Scheme. Merely because the concept of voluntary retirement is introduced for the first time by the pension scheme, it is wrong to contend that resignation tendered prior to coming into force of the provisions of the said Scheme takes character of voluntary retirement from service. As observed earlier, by Paragraph-30 new rights are

conferred on the employees of the Corporation to claim pensionary benefits while voluntarily retiring from service. New rights are conferred prospectively. It is relevant to note that resignation of the appellant from service was accepted with effect from April 1, 1987 and he had received all terminal benefits which were available to him under the conditions of service. Moment those benefits were received, employer-employee relation had come to an end and, therefore, now the appellant cannot claim that his resignation from service should be treated as voluntary retirement from service for the purpose of pension scheme and necessary benefits should be accorded to him. It is not the case of the appellant that after coming into force of provisions of Pension Scheme, an employee of the Corporation is not entitled to resign from service. Therefore, the distinction between the resignation and voluntary retirement from service is maintained even after coming into force of provisions of the Pension Scheme. Viewed from any point, it is difficult to hold that resignation of the appellant from service with effect from April 1, 1987 stands on the same footing as voluntary retirement from service as envisaged under Paragraph-30 of the Pension Scheme. In our view, therefore, the learned Single Judge was justified in dismissing the petition.

9. Reverting to the authorities cited at the bar we find that in M/s. J.K.Cotton Spg. & Wvg. Mills Co.Ltd. (supra), the question which was considered by the Supreme Court was whether acceptance of resignation voluntarily tendered by the employee can be said to be retrenchment within the meaning of Section 6N of the Uttar Pradesh Industrial Disputes Act, 1947. From the facts of the case as mentioned in the reported decision, it is evident that an employee had tendered resignation from service by addressing a letter. The resignation was accepted. The amount due to the employees by way of salary, allowances etc. was worked out and paid to him. However, the employee raised an industrial dispute. The Labour Court held that the resignation of the employee was not voluntary and his services were wrongly terminated. The Labour Court, therefore, ordered reinstatement of the employee. Against that award, the employer filed petition under Article 226 of the Constitution. High Court concluded that the employee had tendered resignation voluntarily and without any threat and coercion. However, considering the definition of retrenchment, the High Court held that termination of services of employee fell within the said definition and as employer had failed to observe the requirements of section 6N, termination of services was invalid.

Thereupon the employer approached the Supreme Court under Article 136 of the Constitution. After noticing dictionary meaning of words "resign and retire", the Supreme Court has held that when an employee resigns his office, he formally relinquishes or withdraws from his office and he takes a mental decision to sever his relationship with his employer and thereby puts an end to the contract of service. The Supreme Court examined employee's request contained in the letter of resignation and held that when the employee voluntarily tendered his resignation, it was an act by which he voluntarily gave-up his job and, therefore, his case was covered by the expression "voluntary retirement" within the meaning of clause (i) of section 2(s) of the said Act. It may be mentioned that section 2(s) of the Uttar Pradesh Industrial Disputes Act is in pari materia with section 2(o) of the Industrial Disputes Act and, therefore, Supreme Court while examining the question whether acceptance of the resignation was retrenchment has held that resignation showed that it was a voluntary act on the part of the employee and acceptance of it was not termination of service by the employer, but voluntary retirement of the workman and it was not necessary to comply with section 6N of the U.P. Industrial Disputes Act. In our view, the facts of the case on hand are quite different than the facts which were present before the Supreme Court. The Supreme Court has not ruled that the resignation of an employee prior to the coming into force of provisions of Pension Scheme should be treated as his voluntary retirement from service under the pension scheme. Even otherwise, it is not held that resignation of an employee from service should be treated as voluntary retirement for all the purposes including for pensionary benefits. Under the circumstances, we are of the opinion that the principle laid down in M/s. J.K. Cotton Spg. & Wvg. Mills Co. Ltd.'s case does not help the appellant.

In Union of India & others (supra), the respondent had joined the Army Dental Corps in the year 1960. He was given grading in Army in 1962. He was promoted to the rank of Lt. Colonel. On January 2, 1984, he wrote a letter requesting for permission to resign from the service w.e.f. April 30, 1984 or from an early date. The said resignation was accepted by communication dated July 24, 1984. In the said communication, it was also mentioned that consequent upon his resignation, the respondent would not be entitled to gratuity, pension, leave pending resignation and travel concession. On receipt of the said communication, the respondent wrote a letter stating that he was not

interested in leaving the service. By another letter dated August 22, 1984, the respondent prayed for cancellation of permission to resign. The request made in the letters was not accepted. Thereupon, a writ petition was filed in the Guwahati High Court. The relief which was sought related only to the acceptance of his resignation. Two contentions were urged before the High Court, which were; (i) resignation was not accepted by the competent authority and as such, the acceptance of resignation could not be given effect to, and (ii) letter of withdrawal should have been considered by the authorities. The writ petition was however, rejected by the High Court. The respondent then filed a fresh writ petition in which it was contended that he should not be deprived of pension and other benefits. In the reply before the High Court, the appellants relied upon the letter dated April 25, 1981 of the Army Headquarters in which it was, inter-alia, stated that if an officer was permitted to resign his commission, then he would not be entitled to any terminal benefits such as pension, gratuity, leave pending resignation. The Guwahati High Court came to the conclusion that it was unreasonable to deny terminal benefits to the respondent and directed the appellants to make available to the respondent all the admissible terminal benefits. A certificate under Article 134-A(a) of the Constitution was issued by the High Court. It was submitted on behalf of the appellant before the Supreme Court that according to letter dated April 25, 1981, there was an automatic forfeiture of the terminal benefits on the resignation of the respondent having been accepted and, therefore, the High Court erred in granting relief to the respondent. The Supreme Court considered Pension Regulations for the Army and held that Regulation 16(a) gives the President the power either to forfeit or to reduce the rate of pension in the event of an officer being cashiered, dismissed or removed from the service, but under sub-regulation (b) of Regulation-16, if an officer is called upon to retire or resign, he may at the discretion of the President be granted a pension at a rate not exceeding what he would have otherwise qualified. After examining the Scheme envisaged by Pension Regulations for the Army, it is ruled that Regulation 16 does not cover a case of voluntary resignation and regulations never intended to take away the right of a person to the terminal benefits on his voluntarily resigning. In view of this conclusion, the Supreme Court dismissed appeal filed by the Union of India and others. In our view, principle laid down in this decision is also not applicable to the facts of the present case. The pension scheme which is applicable to the appellant does not provide that if an officer resigns

from service, he would be entitled to pensionary benefits. On the contrary, a specific provision is made in Regulation-22 to the effect that resignation or dismissal or removal or terminal or compulsory retirement of an employee from the service of the Corporation or a Company shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. Therefore, we are of the opinion, that the appellant is not entitled to any relief on the basis of the principle laid down by the Supreme Court in the case of Union of India and others (supra).

10. At this stage, it would be instructive to refer to the decision of the Supreme Court in Government of Tamil Nadu and another v. K. Jayaraman (supra). Therein, the respondent was initially appointed in a contingent establishment on November 20, 1942 and was later appointed on regular basis as an attendant on February 18, 1945. He tendered voluntary resignation by letter dated June 6, 1970 which was accepted by the Government w.e.f. March 19, 1970. As per the pre-existing rules, the government servant was required to put in 30 years of qualifying service for pensionary benefits. Rules came to be amended by G.O.Ms. No.1537, with effect from November 13, 1972. It was stated therein that the Government may, by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice, after he has attained the age of 50 years or after he has completed 25 years of qualifying service retire any government servant. It was also stated therein that any government servant, who has attained the age of 50 years or who has completed 25 years of qualifying service, may also likewise retire from service by giving notice of not less than three months in writing to the appropriate authority. As observed earlier, the respondent had tendered voluntary resignation before the rules were amended and, therefore, termination benefits were denied to him. Thereupon, he moved Tribunal which took the view that he was entitled to pension on completing 25 years of qualifying service applying the aforesaid G.O.M. The Supreme Court has held that the view of the Tribunal that the respondent was entitled to pension on completing 25 years of qualifying service applying the aforesaid G.O. is clearly illegal because the G.O. cannot be given retrospective effect. If the principle laid down by the Supreme Court in the above-referred to case is applied to the facts of the present case, we find that pension scheme is not given retrospective effect and, therefore, resignation tendered by the appellant from service, cannot be treated as his voluntary retirement from

service in terms of Paragraph-30 of the Pension Scheme.

11. Learned Counsel for the respondent has relied on several decisions of the Supreme Court as noted earlier, but we are of the opinion that it is not necessary to make detailed reference to all of them. In substance, what is laid down by the Supreme Court in those decisions is that pension or family pension is a condition of service of an employee and if the case of an employee does not fall within those conditions of service, he is not entitled to pension. We have already observed earlier that before coming into force of the Pension Scheme, the appellant had voluntarily resigned from service and had also obtained terminal benefits which were available to him at that point of time. The claim of the appellant that his resignation from service should be treated as his voluntary retirement from service, cannot be accepted because pension scheme does not envisage at all that resignation from service and voluntary retirement from service are one and the same thing and also because pension scheme is not retrospective in nature. We do not find that any error is committed by the learned Single Judge either in interpreting the provisions of Pension Scheme or in rejecting the claim which was advanced by the appellant in the petition. No ground is made out by the learned Counsel for the appellant to interfere with the impugned judgment and, therefore, the appeal deserves to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed, with no order as to costs.

(patel)