IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

Manohar Singh vs. Union of India & Others.

S.B.CIVIL WRIT PETITION NO. 5988/2006

DATE OF JUDGMENT : 30th April, 2014

PRESENT

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr. Anil Bhandari, for the petitioner.
Mr.Jagdish Vyas, for the National Insurance Company.

BY THE COURT:

1. Whether it was “resignation” from service or “retirement” voluntarily taken by the petitioner from his employer, National Insurance Company, is the question involved in the present case.

2. The petitioner Manohar Singh, was appointed as a Development Inspector on 09 August 1979 and since then he continuously served the respondent Insurance Company till 2006 for 27 years. On 18 January 2006, due to some unavoidable family

circumstances, the petitioner informed the Deputy General Manager of the respondent Insurance Company that he is unable to continue his services so he resigns from the service with immediate effect. He further requested the Company to accept his resignation and settle his dues as per the norms.

3. Upon completion of one month, a communication dated 17th February 2006 was sent by the Company to the petitioner informing him that the competent authority has accepted his resignation and, therefore, he was relieved from the Company at the close of office hours on 17/2/2006. The petitioner was also informed that all dues owed by the petitioner towards the Company shall be adjusted from the terminal dues payable to him. The Regional Office of the respondent Insurance Company by another communication of the same date 17.2.2006 informed the petitioner that the competent authority has decided to accept the resignation of the petitioner with recovery of salaries in lieu of shortfall in the notice period expiring on 18.4.2006 i.e. 3 months salary and thereby relieving the petitioner - Development Officer at the close of office hours on 17.2.2006. Thus the respondent Company recovered Rs.59,617.53 against the 90 days salary in lieu of notice period from the terminal dues of the petitioner.

4. The respondent Company sanctioned Rs.2,47,460/- as Gratuity payable to petitioner vide Annex.4 dated 30.3.2006, which was payable after deduction of various loans and dues including three months' salary in lieu of notice, which as per Annex.4 itself comes to Rs.3,55,694.53 (HBL Recovery – Rs.1,17,747.35, Vehicle Loan – Rs.1,47,680/-, Drought Advance – Rs.5,700/-, Festival Advance – Rs.7,000/-, Cooperative dues – Rs.17,950/-, 3 months salary – Rs.59,617.53). Vide Annex. 5 dated 11/7/2006, an amount of Rs.3,18,726/- is shown payable to the petitioner as his contribution toward Provident Fund.

5. The petitioner was also informed that the Company's contribution towards Provident Fund has been retained & transferred to general Pension Fund. This was so communicated to him vide letter Annex.5 dated 6th July, 2006.

6. Learned counsel for the petitioner, Mr. Anil Bhandari submitted that the Central Government has framed a General Insurance Employee’s Pension Scheme, 1995 notified in the Gazette on 28-Jun-95 in exercise of its powers under section 17 A of the General Insurance Business (Nationalisation) Act 1972 and it is not in dispute that the said Pension Scheme would apply to the petitioner also. However on the dispute raised by the respondent Insurance

Company that upon the resignation from service, the petitioner's past services were forfeited as per Clause 22 of the said Scheme and since he did not give 3 months prior notice before resigning from the service, therefore, Clause 30 applicable to the cases of voluntarily retirement would not apply to the petitioner, though he might have completed the qualifying service for the applicability of the said pension scheme and in view of the resignation submitted by the petitioner, his past services stood forfeited and, therefore, the petitioner was not entitled to the grant of pension under the said Scheme. Clause 32 of the said Scheme interestingly also provides for compassionate allowance even to those employees who are dismissed or removed or compulsorily retired or terminated from service, if such dismissal, removal, compulsory retirement or termination is on or after the 1st day of November, 1993 and the case is deserving a special consideration. In that eventuality, the competent authority may sanction a compassionate allowance not exceeding two third of pension which would have been otherwise admissible to him on the basis of qualifying service rendered upto the date of his dismissal, removal, compulsory retirement or termination.

7. The petitioner preferred this writ petition in this Court on

09.10.2006 about 8 years back and claimed that the respondent Company was bound to give him the pension under the Pension Scheme,1995 and in fact the petitioner had only sought voluntary retirement from the service and had inadvertently used the word “resignation” in his letter dated 18/1/2006 (Annex.2).

8. Upon issuance of notices to the respondent Insurance Company, the Company has filed a detailed reply to the writ petition and has contested this writ petition.

9. I have heard the learned counsels on both sides and given my thoughtful consideration to the rival contentions and perused the relevant statutes, Pension Scheme, 1995 & another Scheme of 1976 and judgments cited at the bar.

10. The relevant portion of the General Insurance (Employees') Pension Scheme of 1995 & General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976 are quoted below for ready reference:-

Relevant portion of General Insurance (Employees') Pension Scheme of 1995:

"22. ***Forfeiture of service – Resignation*** *or* ***dismissal*** *or removal or termination 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.***

30. ***Pension on Voluntary Retirement:*** *(1) At any time after an employee has completed* ***twenty years of qualifying service****, he may, by giving* ***notice of not less than ninety days****, in writing to the appointing authority,* ***retire from service****:*

Provided that this sub-paragraph ***shall not apply to an employee who is on deputation*** *unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year:*

Provided further that this sub-paragraph ***shall not apply*** *to an employee who* ***seeks retirement from service for being absorbed permanently in an autonomous body*** *or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.*

(2) The ***notice of voluntary retirement*** *given under sub-paragraph (1)* ***shall require acceptance*** *by the appointing authority:*

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3)(a) An employee referred to in sub-paragraph (1) may make a request in writing to the appointing authority ***to accept notice of voluntary retirement of less than ninety days giving reasons therefore****;*

(b) on receipt of request under Clause (a), the appointing authority may, subject to the provisions of sub-paragraph (2), consider such request ***for the curtailment of the period of notice of ninety days on merits*** *and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience,* ***the appointing authority*** *may relax the requirement of notice of ninety days on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of ninety days.*

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

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

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

(6) The pension of an employee retiring under this paragraph shall be based on the average emoluments as defined under Clause (d) of paragraph 2 of this scheme and the increase, not exceeding five years in his qualifying service, shall not entitled him to any notional fixation of pay for the purpose of calculating his pension;

(32) ***Compassionate allowance****.-*

(1) ***An employee who is dismissed or removed or compulsorily retired*** *or* ***terminated*** *from service shall forfeit his pension:*

Provided that the authority competent to dismiss or remove or compulsorily retire or terminate him from service may, if-

(i) such dismissal, removal, compulsory retirement or termination is on or after the ***1st day of November, 1993; and***

*(ii) the case is **deserving a special consideration,** sanction a **compassionate allowance not exceeding two-thirds of pension** which would have been admissible to him on the basis of qualifying service rendered upto the date of his dismissal, removal, compulsory retirement or termination.*

(2) The compassionate allowance sanctioned under the proviso to sub-paragraph (1) shall not be less than the amount of minimum pension payable under paragraph 35 of this scheme.

Relevant portion of General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme of 1976:-

*5. **Determination of Service:***

*(1) An officer or a person of the Development Staff, other than one on probation shall not leave or discontinue his service without first giving in writing to the appointing authority of his intention to leave or discontinue the service and the **period of notice** required to be given shall be **three months;***

Provided that such notice may be waived in part or in full by appointing authority at its discretion.

***Explanation I** - In this Scheme, month shall*

be reckoned according to the English Calendar and shall commence from the day following that on which the notice is received by the Corporation or the Company, as the case may be.

***Explanation II** - A notice given by an officer or a person of the Development Staff under this paragraph shall be deemed to be proper only if he remains on duty during the period of notice and such officer or person shall not be entitled to set off any leave earned against the period of such notice.*

(2) In case of breach by an officer or a person of the Development Staff of the provisions of sub-paragraph (1), he shall be liable to pay to the Corporation or the Company concerned, as the case may be, ***as compensation a sum equal to his salary for the period of notice required of him which sum may be deducted from any monies due to him****.*

11. Mr Anil Bhandari, learned counsel appearing for the petitioner argued that the petitioner in fact wanted to take voluntarily retirement only due to the family circumstances and having put in more than 27 years of qualifying service as a Development Officer to the respondent Company, he was entitled to the grant of pension under

the Pension Scheme of 1995 after adjustment of Provident Fund amount already paid to him, since in the Provident Fund he and the employer Company both contributed and merely because he used the word “resign” inadvertently in his letter of 18/1/2006, the same cannot deprive him of the right to get the pension, more so when the respondent Company has deducted the salary in lieu of 3 months notice period from the other retiral dues of Rs.59,617.53 vide Annex.4 dated 30/3/2006. He emphasised that the terms of appointment order of the petitioner only required giving of one month’s notice before leaving the service of the respondent Company and since his letter of 18th January 2006 was accepted only after one month i.e. on 17th February 2006 & for which one month period also he was not paid any salary, therefore, it should be taken that the Company itself has not taken it as the case of resignation from service but a voluntarily retirement and, therefore, the past services of the petitioner could not be forfeited depriving the petitioner of his right to get pension for which the respondent Company had itself transferred its own contribution from Provident Fund Account to Pension Fund and had paid only his own contribution at the time of retirement in the year 2006. He also submitted that even in the cases of dismissal, removal etc. under Clause 32 of the Scheme, the Company can give Pension upto 2/3rd

of normal pension as compassionate allowance, then why the Company should deprive the petitioner of his pension rights merely for wrong use of the word “resignation” in the letter dated 18/1/2006.

12. Mr. Anil Bhandari relied upon the decision of the Supreme Court in the case of ***Sheelkumar Jain vs. the New India Assurance Co. Ltd.& Ors. - (2011) 12 SCC 197*** and submitted that the employees, who stood retired even prior to 1995 were so held entitled to the grant of pension under the said Pension Scheme of 1995 and since the old Scheme of 1976 viz General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976, was not applicable to the petitioner, he could not be denied the pension.

13. Mr. Anil Bhandari also relied upon the following case laws in support of his contentions:

1. ***M/s J.K.Cotton Spinning & Weaving Mills Co. Ltd. vs. State of U.P. & Ors. - AIR 1990 SC 1808;***
2. ***Kanhaiya Lal vs. Rajastan Agriculture University & Ors. - 2005 (1) RLR 222;***
3. ***Om Prakash vs. State of Punjab – 2006 (5) SLR 252;***
4. ***National Insurance Co. Ltd. & Anr. vs. Kirpal Singh – Civil***

Appeal No. 256/2014 decided on 10/1/2014.

5. Bank of Baroda vs. S.K.Kool – 2014 AIR SCW 252

14. Mr. Anil Bhandari also submitted that before forfeiting the entire past services of the petitioner as per Clause 22 of the Pension Scheme of 1995, the petitioner was never given any opportunity of hearing and there was a breach of principles of natural justice in this regard and, therefore, the denial of pension to the petitioner is illegal. He also submitted relying upon ***Institute of Chartered Accountants of India Vs. L.K. Ratna & Ors.*** **r**eported in ***AIR 1987 SC 71*** that there is no prohibition in the Scheme in its Clause 22 or else where for giving a notice to the petitioner and giving an opportunity of hearing before forfeiting his entire past qualifying service which is undoubtedly in consonance with the principles of natural justice and he also submitted that the Company ought to have brought to the notice of the petitioner the consequences of his resignation letter and the disadvantages which he may incur on account of the forfeiture of service including the denial of the pension and had such a notice been given to the petitioner, he would have definitely expressed his correct intention that he actually wanted to seek voluntarily retirement and not the resignation, resulting in such forfeiture of past services and loss of regular pension. The mere use of the word

`resignation' should not in law deprive him the benefit of his long qualifying service of 27 years, which is otherwise due to him and the respondent Company should have come forward to guide him before accepting his resignation letter while deducting 3 months salary in lieu of notice from his retrial dues, which would show that the Company had in effect treated the said letter dated 18/1/2006 as voluntary retirement request only.

15. On the other hand, Mr Jagdish Vyas appearing for the respondent – National Insurance Company vehemently disputed the claim of the petitioner and submitted that the plain language of the resignation letter Annex.2 dated 18/1/2006 cannot be understood to mean that it was a case of seeking voluntarily retirement by the petitioner and upon resignation from the service, the forfeiture of past service is a natural consequence and the petitioner is not entitled to the grant of pension and as far as other retiral dues are concerned, the same have been paid to the petitioner like Gratuity, Provident fund etc. He submitted that after giving the resignation letter on 18th January 2006, the petitioner never really reported for duty in the office of the respondent Company and his resignation was duly accepted by the competent authority on 17/2/2006 and recovery of 3 months salary in lieu of shortfall in notice period, to which the

Company was entitled to recover from the petitioner in view of para 5 of 1976 Scheme, since he did not give the advance notice of leaving the job but that would not convert his `resignation' into a `voluntarily retirement' and, therefore, the petitioner cannot be held entitled to the grant of pension as he never approached the respondent Company before filing the present writ petition for the recall of his resignation letter before its acceptance or even a representation to the respondent Company that it was by mistake that he used the word `resignation' in the letter but actually he wanted to take the voluntarily retirement from the services. The acceptance of resignation entails the forfeiture of entire past service as per clause 22 of the Pension Scheme 1995.

16. Mr. Jagdish Vyas also submitted that 3 months salary was recovered in view of para 5 of the 1976 Scheme, which was also in force & applicable to the petitioner and in the absence of any advance notice given by the petitioner the aforesaid sum of 3 months salary was liable to be deducted and recovered from him by way of compensation to the Company. He also relied upon some of the judgments rendered by the Hon'ble Supreme Court and submitted that the present writ petition deserves dismissal. He relied upon the following judgments:-

1. ***Reserve Bank of India & anr. vs. Cecil Dennis Solomon & Anr. - AIR 2004 SC 3196;***

2. ***UCO Bank & ors. vs. Sanwar Mal – (2004) 4 SCC 412;***

3. ***Union of India vs. Gopal Chandra Misra & Ors. - AIR 1978 SC 694;***

4. ***Sheel kumar Jain vs. New India Assurance Company Ltd. - (2011) 12 SCC 197;***

5. ***M.R.Prabhakar & Ors. vs. Canara Bank & ors. - (2012) 9 SCC 671.***

6. ***Ghanshyam Dass Relhan vs. State of Haryana & Ors. - (2009) 14 SCC 506.***

7. Union of India & Ors. vs. Rakesh Kumar – (2001) 4 SCC 309.

8. Vijay S. Sathaye vs. Indian Airlines Ltd. & ors. - (2013) 10 SCC 253.

9. Bank of Baroda & ors. vs. Ganpat Singh Deora – (2009) 3 SCC 217.

17. The leading case on resignation versus retirement concept appears to have landed before the Constitution Bench of the Hon'ble

Supreme Court in the case of a High Court Judge reported in ***AIR 1978 SC 694*** in the case of ***Union of India vs. Gopal Chandra Misra & Ors*** in which a Judge of the Allahabad High Court gave a conditional and prospectively operative resignation in a letter dated 7/5/1977 written and addressed to the President of India to be effective from 1st August, 1977 but before that date he gave another letter dated 15/7/1977 and revoking the earlier resignation requested the President of India to treat the earlier letter as withdrawn. On a writ petition filed by one Advocate for issuing a writ of *quo* warranto against the said Judge and asking the Court to direct the said High Court Judge to demit the office, the Hon'ble Supreme Court held that the said High Court Judge could revoke his resignation letter before its acceptance and could thus continue in the office. Explaining the term `resignation' the Court held that “resignation” would mean the spontaneous relinquishment of one's right in relation to an office & it connotes the act of giving up or relinquishing the office. A prospective resignation remains mute and inoperative till the date on which it was intended to take effect and can be withdrawn and rendered *non est* at any time before that date. The relevant extract from the said judgement is quoted below for ready reference:-

24. ***'Resignation' in the Dictionary sense, means the spontaneous relinquishment of one's***

own right. *This is conveyed by the maxim :* ***Resionatio est juris propii spontanea refutatio*** *(See Carl Jowitt's Dictionary' of English, Law). In relation to an office, it connotes the act of giving up or relinquishing the office. To* ***"relinquish an office" means to "cease to hold" the office, or to "loose hold of the office*** *(cf. Shorter Oxford Dictionary); and to "loose hold of office", implies to* ***"detach", "unfasten", "undo or untie the binding knot or link"*** *which holds one to the office and the obligations and privileges that go with it.*

25. In the general juristic sense, also, the meaning of "resigning office" is not different. There also, as a rule, both, the intention to give up or relinquish the office and the concomitant act of its relinquishment, are necessary to constitute a complete and operative resignation (see, e.g. American Jurisprudence, 2nd Edn., Vol. 15A, page 80), although the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. Thus, resigning office necessarily involves relinquishment of the office which implies cessation or termination of, or cutting asunder from the office. ***Indeed, the completion of the resignation and the vacation of the office, are the causal and effectual aspects of one and the same event.***

41. We are also unable to agree with the High Court that the mere sending of the letter, dated ***May 7, 1977***

by the Judge to the President and its receipt by the latter, constituted a complete juristic act. ***By itself, it did not operate to terminate the office tenure of the Judge, and as such, did not bring into existence any legal effect****. (***Likewise, in the present case also , the so called resignation letter was dated 18/1/2006, but it was accepted w.e.f. 17/2/2006 & that too with the recovery of 3 months' salary in lieu of notice, which *de jure* makes it a letter of voluntary retirement & not resignation, which should have resulted in severance of employer-employee relationship forthwith on 18.1.2006.) *For the same reason, the principle underlying Section 19 of the Transfer of Property Act is not attracted.*

42. The general principle that emerges from the foregoing conspectus, is that in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post, an intimation in writing sent to the competent authority by the incumbent, of his intention or ***proposal to resign his office/post from a future specified date, can be withdrawn by him at any time before it becomes effective, i.e. before it effects termination of the tenure of the office/post or the employment****.*

50. …….. Secondly, a proposal to retire from service/office and a tender to resign office from a future date, for the purpose of the point under discussion stand on the same footing. Thirdly, the distinction between a case where the resignation is

required to be accepted and the one where no acceptance is required makes no difference to the applicability of the rule in Jai Ram's case.

51. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a 'prospective' resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. ***This general rule is equally applicable to Government servants and constitutional functionaries.*** *In the case of a Government servant/or functionary who cannot under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally,* ***the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority.*** *In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesanti, the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing chooses to resign from a future date, the act resigning office is not*

complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal."

18. The judgment of the Hon'ble Supreme Court in the case of ***Sheel Kumar Jain (supra),*** which comes very near to the facts of the present case and dealt with the same General Insurance Employee's Pension Scheme of 1995 is reported in ***(2011) 12 SCC 197***. The Hon'ble Supreme Court held that where the appellant had completed 20 years of qualifying service and having given 3 months notice of his intention to leave the service and the competent authority had accepted the notice and relieved him from service, the Scheme would apply to the appellant and he would be entitled to the pension even though in the notice he had used the word the "resigned". Holding that clause 30 of the 1995 scheme would override Clause 22 and the past service of the employee could not be forfeited as per para 5 of the Scheme of 1976. The relevant extract of the said judgment is quoted below for ready reference:

"Para 30 of the General Insurance (Employees) Pension Scheme, 1995 (1995 Pension Scheme) was framed for the purpose of granting pensionary benefits to employees, who after completing 20 years'

qualifying service voluntarily retired upon acceptance of their three months' notice therefor. The 1995 Pension Scheme was made applicable also to those who retired before 1.11.1993. The appellant after completing 20 years' qualifying service served a three months' notice in 1991 under Para 5 of the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1970 then in force, of his intention to "resign" from his post and in response the competent authority accepted his resignation with effect from the date of completion of three months' notice. ***Para 5 of the 1976 Scheme required giving of three months' notice of intention to "leave or discontinue" the service and it neither stated that termination of service pursuant to the notice would amount to resignation or voluntary retirement, nor required acceptance of the notice by the competent authority.*** *After coming into force of the 1995 Scheme, the appellant sought pensionary benefits under Para 30 thereof. But the appellant's prayer was rejected by the respondent on ground that the 1995 Scheme would not be applicable to those who resigned from service in view of* ***Para 22 thereof which provided that resignation shall entail forfeiture of past services****.*

Allowing the appeal, ***the Supreme Court held the appellant having completed 20 years' qualifying service and having given three months'***

notice of his intention to leave the service and the competent authority having accepted the notice and relieved him from service, Para 30 of the 1995 Scheme applied even though in the ntoice he had used the word "resigned" (**Here in the present case also, instead of 3 months' notice, in lieu of notice period, 3 months' salary has been recovered, so this case also stands on parity with Sheel Kumar Jain's case)***. Since voluntary retirement unlike resignation does not entail forfeiture of past services and instead qualifies for pension, the appellant to whom the 1995 Scheme applied cannot be said to have resigned from service. Paras 22 and 30 of the 1995 Scheme cannot be so construed as to deprive the appellant of his pensionary benefits.*

14. We have perused the decisions of this Court cited by learned Counsel for the Respondents. ***In RBI v. Cecil Dennis Solomon*** *the 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. 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.

15. Similarly, in ***UCO Bank v. 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. 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. 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.*

16. ***In these two decisions, Sanwar Mal and Cecil Dennis Solomon, 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.*

25. ***Para 22 of the Pension Scheme, 1995*** *states that 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 16.09.1991 to the General Manager of Respondent 1 - Company he had used the word 'resign'****.*

28. ***In Union of India v. Lt. Col. P.S. Bhargava – (1997) 2 SCC 28****, the respondent joined the Army Dental Corps in 1960 and thereafter he served in various capacities as a specialist and on 02.01.1984 he wrote a letter requesting for permission to resign from service with effect from 30.04.1984 or from an early date. His resignation was accepted by a communication dated 24.07.1984 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 18.08.1984 stating that he was not interested in leaving the service. This was followed by another letter dated 22.08.1984 praying to the authority to cancel the permission to resign.*

29. ***These letters were written by the Respondent because he realized that he would be deprived of his pension, gratuity, etc. as a consequence of his***

resignation. *These subsequent letters dated 18.08.1984 and 22.08.1984 were not accepted and the respondent was struck off from the rolls of the Army on 24.08.1984. On these facts, the Court held: (P.S.Bhargava case 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 Regulations 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. Para 22 and 30 of the 1995 Pension Scheme 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 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"

19. In a subsequent decision rendered by the Supreme Court in the case of ***M.R.Prabhakar & ors. vs. Canara Bank & Ors. - (2012) 19 SCC 671***, the Supreme Court distinguished the judgment in the case of ***Sheel Kumar Jain (supra)*** the following terms.

*19. **We may point out that in Sheelkumar Jain this Court was dealing with an insurance scheme and not the pension scheme, which is applicable in the banking sector. The provisions of both the scheme and the Regulation are not pari materia**. In*

Sheelkumar Jain case, while referring to Para 5, this Court came to the conclusion that the same does not make distinction between 'resignation' and 'voluntary retirement' and it only provides that an employee who wants to leave or discontinue his service amounts to 'resignation' or 'voluntary retirement'. Whereas, Regulation 20(2) of the Canara Bank (Officers) Service Regulations, 1979 applicable to banks, had specifically referred to the words 'resignation', unlike Para 5 of the Insurance Rules. Further, it is also to be noted that, in that judgment, this Court in Para 30 held 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.

20. The appellants, when tendered their letters of resignation, were governed by the 1979 Regulations. Regulation 20(2) of 1979 Regulations dealt with resignation from service and they tendered their resignation in the light of that provision. We are of the view that the Appellants have failed to show any pre-existing rights in their favour either in the Statutory Settlement/Joint Note dated 29.10.1993 or under the 1995 Regulations. Appellants had resigned from service prior to 1.11.1993 and, therefore, were not covered by the statutory settlement, Joint Note dated 29.10.1993 and the 1995 Regulations. They could not establish any pre-existing legal, statutory or fundamental rights in their favour to claim the benefit of

1995 Regulations. Consequently, the reliance placed by the appellants either on Regulation 29 or Regulation 22 in support of their contentions, cannot be accepted, since they are not covered by the scheme of pension introduced by the banks with effect from 1.11.1993.

21. We, therefore, find no merit in these appeals and the same are dismissed, with no order as to costs."

20. In ***Ghanshyam Dass Relhan vs. State of Haryana & Ors. - (2009) 14 SCC 506,*** the Hon'ble Supreme Court held that the resignation before completion of the qualifying service would entail the forfeiture of the past service and, therefore, the employee will not be entitled to for the pension but only part of the pension.

These two later cases relied upon by the learned counsel for the respondent – National Insurance Company are not applicable for the same reason that two Pension Schemes in Insurance Sector & Banking Sector are different and not pari materia, as observed by Hon'ble Supreme Court itself in afore quoted decision in the case of ***M.R.Prabhakar (supra).***

21. The question involved before this Court is that while the word used in the letter by the employee was undoubtedly "resignation" and that too with immediate effect and also the fact remains that the

petitioner did not report for duty after giving the letter on 18/1/2006 but the acts on the part of the respondent Insurance Company are enough to *de jure* treat the communication dated 18/1/2006 not as a resignation but as an application for voluntarily retirement by the petitioner. The fact that the resignation was accepted only after completion of one month period in terms of appointment order, w.e.f. 17/2/2006, coupled with the fact that the respondent Insurance Company deducted 3 months salary in lieu of notice period as per Para 5 of 1976 Scheme for taking voluntary retirement and also the fact that the contribution for Provident fund made by the Insurance Company in the case of petitioner was transferred to the Pension Fund are all the facts and acts of respondent Insurance Company which makes it a case of retirement & not resignation. Neither the acceptance of resignation was with immediate effect nor the petitioner was relieved from his service immediately upon giving the resignation letter on 18/1/2006 but only after one month thereof on 17/2/2006, for which one month also he was not paid any salary and further by way of compensation, the Company also deducted 3 months salary in lieu of notice period. The completion of qualifying service by the petitioner of 27 years viz more than prescribed period of 20 years is not even disputed by the respondent Company. The severance of relationship of employer and employee took place after

completion of one month and not immediately on 18/1/2006. In these circumstances, depriving the petitioner of his right to get the pension and forfeiting his entire past service as per clause 22 of the Scheme, cannot be accepted as a legal & valid act on the part of the respondent Insurance Company, without passing of a speaking order under Clause 22 of the Pension Scheme, after giving an opportunity of hearing to the petitioner.

22. The breach of principles of natural justice by not providing any opportunity of hearing to the petitioner is also writ large in the present case. The forfeiture of past period of service entails adverse civil and financial consequences for the petitioner. Nothing prevented the respondent Insurance Company from giving an opportunity of hearing to the petitioner and putting him to notice that the word “resignation” would entail forfeiture of past service and he would be deprived of his right to get pension. The respondent Company could advise the petitioner to either continue to serve the Company for one month more or 3 months more for notice period or could agree to the deduction of 3 months' salary in lieu of notice period. The public authority is expected to act fairly and not surreptitiously to the disadvantage of its employees particularly those who have served the Company for long periods of qualifying service & more. The

resignation or retirement sought by the employee due to unavoidable family circumstances should not have been further aggravated by causing him the financial loss by depriving him of the pension to which otherwise he was admittedly entitled had he actually used the word “retirement” in place of “resignation” in the letter. Clause 22 of the Scheme is not meant to cause harm to the innocent employees and the Company should not be trigger happy to deprive the employee of his right to get the pension by forfeiting the past services without even giving an opportunity of hearing to the petitioner. Mere use of word “resign” with immediate effect, which immediacy was not even accepted by the respondent, cannot be construed as a fatal step for the petitioner to take away his right to get the pension under 1995 Pension Scheme. When even a dismissed or compulsorily retired employee can be given upto 2/3rd of pension, why an employee who “resigns” should be deprived of the same altogether without even been told before hand about such a consequences of his giving a letter of resignation or retirement.

23. The Hon'ble Supreme Court in a large number of judgments has held that the principles of natural Justice have to be read into unoccupied fields in a statute, unless it is specifically excluded by statutory provision. In the case of **Institute of Chartered**

Accountants of India Vs. L.K. Ratna & Ors. reported in **AIR 1987 SC 71,** Hon'ble Supreme Court has held as under: -

> *"16. It is next pointed out on behalf of appellant that while Regulation 15 requires the Council, when it proceeds to act under S. 21 (4), to furnish to the member a copy of the report of the Disciplinary Committee, no such requirement is incorporated in regulation 14 which prescribes what the Council will do when it receives the report of the Disciplinary Committee. That, it is said, envisages that the member has no right to make a representation before the Council against the report of the Disciplinary Committee. The contention can be disposed of shortly. There is nothing in Regulation 14 which excludes the operation of the principle of natural justice entitling the member to be heard by the Council when it proceeds to render its finding.* ***The principles of natural justice must be read into the unoccupied interstices of the statue unless there is a clear mandate to the contrary."***

24. Relying on the aforesaid judgment, this Court in the case of ***Dr. Sushil Kumar V/s Union of India and ors. - S.B. Civil Writ Petition No.1586/2014 decided on 27/3/2014*** has held as under:-

> *"12. This Court in an income-tax matter in the case of*

M/s Maheshwari Agro Industries Vs. Union of India & Ors. *reported in* ***(2012) 346 ITR 375 : (2012) 2 RLW 1912****, while holding that the Commissioner of the Income-tax (appeals) had an inherent power to entertain the stay application in a pending appeal against the rejection of the stay petition by the Assessing Authority read into the unoccupied field, the principles of natural justice and following various* ***precedents*** *of the Apex Court and English decisions, the Court held as under:*

*"**28. .....***

31. *In the land mark decision delivered on 11.03.1968, the three Judges bench of Hon'ble Supreme Court in the case of* ***M.K. Mohammed Kunhi (supra)****, in unanimous opinion authored by* ***Grover, J****, dealing with words "as he may think fit", which were available to the ITAT also while deciding appeals before it and in the face of absence of clear provisions for grant of stay against the disputed demand of tax, the Apex Court held that such power is inherent in the appellate powers and the Tribunal should be deemed to have such power under Section 254 of the Act. Quoting from* ***Domat's Civil Law Cushing's Edition, Vol. 1 at page 88****, the Hon'ble Supreme Court noted the following quotation: "**It is the duty of the judges to apply the laws, not only to what appears to be regulated by their express dispositions, but to all the cases where a just application of them may be made, and which appear to be comprehended*

either within the consequences that may be gathered from it."

Further relying on the Maxim ***"Cui jurisdiction date est, ea quoque concessa essee videntur, sine quibus jurisdictio explicari non potuit"****, which means* ***"where an inferior court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be enforced."***

Noticing that in some of the earlier judgments, the court expressed the difficulty that appellate tribunal did not possess the power to stay the recovery during the pendency of the appeal, with reference to the judgment in the case of ***Vetcha Sreeramamurthy Vs. Income-tax Officer, Vizianagaram & Anr.*** *reported in* ***(1956) 30 ITR 252 (AP)*** *and relying upon* ***Halsbury's Laws of England, third edition, volume 20, page 705****, wherein it is stated that no tax is payable while the assessment is the subject-matter of an appeal, except such part of the tax assessed as appears to the Commissioners seized of the appeal not to be in dispute. Ultimately, relying upon the provision of Section 255 (5) of the Act, which empowers the appellate Tribunal to regulate its own procedure, the Court proceeded to hold that appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. The conclusions of the Hon'ble Supreme Court in para 13 and 14 of* ***Mohd.***

Kunhi's *judgment are quoted below for ready reference: -*

> *"13. Section 255 (5) of the Act does empower the Appellate Tribunal to regulate its own procedure, but it is very doubtful if the power of stay can be spelt out from that provision.* ***In our opinion the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction****. This is particularly so when section 220 (6) deals expressly with a situation when an appeal is pending before the Appellate Assistant Commissioner,* ***but the Act is silent in that behalf*** *when an appeal is pending before the Appellate Tribunal. It could well be said that* ***when section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its executions*** *and that the statutory power carries with it the duty in proper cases to make such orders for staying proceeding as will* ***prevent the appeal if successful from being rendered nugatory.***
>
> *14. A certain apprehension may legitimately arise in the minds of the authorities administering the Act that, if the Appellate Tribunal proceed to stay recovery of taxes or penalties payable by or imposed on the assessee as a matter of course, the revenue will be put to grant loss because of the inordinate delay in the disposal of appeals by the Appellate Tribunal.* ***It is needless to point out that the power of stay by the Tribunal is not likely to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. It will only be when a strong prima facie case is made out that the Tribunal*** *will consider whether to stay the recovery proceedings and on what conditions, and the stay will be granted in most deserving and appropriate cases where the Tribunal is satisfied that the entire purpose of the*

appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal."

36. *A reasonable construction agreeable to justice and reason is to be preferred to an irrational construction. The Court has to prefer a more reasonable and just interpretation for the reason that there is always a presumption against the law maker intending injustice and unreasonability/ irrationality, as opposed to a literal one and which does not fit in with the scheme of the Act. In case the natural meaning leads to mischievous consequences, it must be avoided by accepting the alternative construction. (Vide:* ***Bihar State Council of Ayurvedic and Unani Medicine v. State of Bihar*** *-* ***(2007) 12 SCC 728*** *and* ***Mahmadhusen Abdulrahim Kalota Shaikh v. Union of India****-* ***(2009) 2 SCC 1]***

37. *The Court has not only to take a pragmatic view while interpreting a statutory provision, but must also consider the practical aspect of it. (Vide:* ***Union of India v. Ranbaxy Laboratories Ltd****.-* ***(2008) 7 SCC 502****)*

38. *In* ***Narashimaha Murthy v. Susheelabai – (1996) 3 SCC 644,*** *the Court held as under:-*

"20. ... The purpose of the law is to ***prevent brooding sense of injustice****. It is not the words of the law but the spirit and eternal sense of it that makes the law meaningful.*

39. *In* ***Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate – AIR 1958 SC 353****, it has been held thus:*

"9. ... the definition clause must be read in the context of the subject matter and scheme of the Act, and consistently with the objects and other provisions of the Act.

40. *In* ***Sheikh Gulfan v. Sanat Kumar Ganguli*** *–* ***AIR 1965 SC 1839*** *it has been held as follows:-*

19. ...Often enough, in interpreting a statutory provision, it becomes necessary to have regard to the subject matter of the statute and the object which it is intended to achieve. That is why in deciding the true scope and effect of the relevant words in any statutory provision, the context in which the words occur, the object of the statute in which the provision is included, and the policy underlying the statute assume relevance and become material....

41. *Any interpretation which eludes or frustrates the recipient of justice is not to be followed. Justice means justice between both the parties. Justice is the virtue, by which the Court gives to a man what is his due. Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. The underlying idea is of balance. It means to give to each his right. Therefore, while tempering the justice with mercy, the Court has to be very conscious that it has to do justice in exact conformity with the statutory requirements.*

42. *Thus, it is evident from the above referred law, that the Court has to interpret a provision giving it a construction agreeable to reason and justice to all parties concerned, avoiding injustice, irrationality and mischievous consequences. The interpretation so made must not produce unworkable and impracticable*

results or cause unnecessary hardship, serious inconvenience or anomaly. The court also has to keep in mind the object of the legislation."

25. In the present case this Court is of the clear opinion that the use of the word "resignation" in the letter by the petitioner was inadvertent and misplaced and the petitioner would not have willingly accepted at any point of time the forfeiture of his past services and right to receive the pension, particularly when he had immediately filed the present writ petition in 2006 itself for invoking his that right. Merely because he did not make any prior representation to the respondent Company itself before approaching this Court by the present writ petition, his rights in this regard cannot be allowed to die. The respondent Company has actually *de facto* & *de jure* treated the resignation letter of the petitioner dated 18/1/2006 as a request for voluntary retirement only, since the same was accepted after one month of the notice & the Company also deducted 3 months' salary in lieu of further notice of voluntary retirement for 3 months as per Para 5 of the 1976 scheme & the respondent Company cannot be allowed approbate and reprobate & cause financial loss to the petitioner by merely insisting and sticking to the word "resignation" in the letter dated 18/1/2006 of the petitioner. The respondent Insurance Company is estopped from doing so. Had the petitioner

been put to notice about the consequences of resignation on his pensionary rights, no man with common prudence would have still insisted on “resignation” instead of taking “retirement”. Section 114 of the Evidence Act mandates & allows the Court to presume such normal human conduct in a legal battle on such issues,what the petitioner is required to be told is not the fine legal nuances between the concept of “resignation” & “retirement” but the principles of judicious approach should prevail in such cases & therefore this Court is taking this view that it is incumbent upon the employer Company to pass appropriate orders under Clause 22 of the Pension Scheme after giving an opportunity of hearing to the employee concerned.

26. In none of the judgments cited at the bar by the learned counsel for the respondent Insurance Company, the question relating to passing of an appropriate quasi judicial order under Clause 22 of the 1995 Scheme for forfeiture of past services after giving an opportunity of hearing to the employee concerned has been discussed & in the absence of such prior notice and an opportunity of hearing, whether the petitioner can be denied the pension does not appear to be an issue raised before the Courts earlier and decided. Therefore none of the judgments or precedents

cited before this Court, goes contra to the said proposition relied upon by this Court for holding that passing of the appropriate speaking order after giving due and proper opportunity of hearing to the petitioner and even making him aware of his rights and consequences of the resignation letter tendered by him was necessary under Clause 22 of the 1995 Pension Scheme and in the absence of the same having been done by the respondent Company, the present writ petition deserves to be allowed & petitioner is accordingly held entitled to his pensionary rights and the resignation in present case for all purposes deserves to be treated as a voluntary retirement taken by the petitioner.

27. Consequently, this Court is of the clear opinion that the writ petition deserves acceptance. The same is accordingly allowed. The respondent National Insurance Company is directed to compute the pension payable to the petitioner and pay the same within three months from today. No order as to costs. Copy of the order be sent to the parties concerned forthwith.

(DR.VINEET KOTHARI), J.

item no.4
baweja/-