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

+ **WRIT PETITION (CIVIL) No. 8494/2017**

Date of decision: 22nd September, 2017

SH. RAJ KUMAR

..... Petitioner

Through Mr. Anuj Aggarwal & Mr. Tenzing
Thinlay Lepcha, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through Ms. Ruchi Jain, Advocate for UOI
alongwith Mr. Vivek Kumar Singh, DC,
Law, CRPF.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (ORAL):

The petitioner, Raj Kumar was appointed as a Cook in the Central Reserve Police Force on 22nd May, 1989.

2. The petitioner tendered his resignation on 28th February, 2000.
3. The resignation was accepted and the petitioner was discharged from service on 31st March, 2000.
4. The petitioner has filed the present writ petition challenging vires of Rule 26 of the Central Civil Services (Pension) Rules, 1972,

(Pension Rules, for short) to the extent it states that resignation from service or post entails forfeiture of past service. The forfeiture stipulation in Rule 26, it is submitted, violates Articles 14, 16, 19 and 21 of the Constitution.

5. The primary contention of the petitioner is that under Rule 40 of the aforesaid Rules on compulsory retirement, the disciplinary authority is competent to and can direct grant of pension, gratuity or both at a rate not less than two-thirds and not more than full pension, gratuity or both. Compulsory retirement is a penalty and, therefore, a government servant who is penalised does not lose and cannot be denied pension or gratuity and the same have to be paid, at least not less than two-thirds. Reliance is placed upon the judgment of the Madras High Court in *M.K. Sivakami versus the Hon'ble Principal District Judge and Others*, Writ Petition No. 30277/2016, decided on 5th April, 2017.

6. Resignation is a voluntary act of the employee. Once accepted, it leads to termination of the employer-employee relationship. Resignation, therefore, has its own consequences and cannot be equated to and is not similar to punishments imposed on the government servant. The punishment commensurates with the misconduct proved and established. The disciplinary and the appellate authorities examine the question of quantum or proportionality of punishment. In some cases, lower or lesser punishment may be imposed, and in others, order of dismissal and removal maybe passed, resulting in denial of pension etc.

7. Supreme Court in *LIC v. Shree Lal Meena*, (2015) 17 SCC 43, while dealing with the question whether resignation can be equated with voluntary retirement and consequential retiral benefits, observed:

"14. We think it appropriate to reproduce the discussion from the said judgment [*J.K. Cotton Spg. and Wvg. Mills Co. Ltd. v. State of U.P.*, (1990) 4 SCC 27 ...

7. From the aforesaid dictionary meanings it becomes clear that when an employee resigns his office, he formally relinquishes or withdraws from his office. It implies that he has taken a mental decision to sever his relationship with his employer and thereby put an end to the contract of service. As pointed out earlier just as an employer can terminate the services of his employee under the contract, so also an employee can inform his employer that he does not desire to serve him anymore. Albeit, the employee would have to give notice of his intention to snap the existing relationship to enable the employer to make alternative arrangements so that his work does not suffer. The period of notice will depend on the period prescribed by the terms of employment and if no such period is prescribed, a reasonable time must be given before the relationship is determined. If an employee is not permitted by the terms of his contract to determine the relationship of master and servant, such an employment may be branded as bonded labour. That is why in *Central Inland Water Transport Corpn.v. Brojo Nath Ganguly* [*Central Inland Water Transport Corpn. v. Brojo Nath Ganguly*, (1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103] this Court observed as under: (SCC p. 228, para 111)

‘111. ... By entering into a contract of employment a person does not sign a bond of slavery and a permanent employee cannot be deprived of his right to resign. A resignation by an employee would, however, normally require

to be accepted by the employer in order to be effective.’

...

15. In *RBI v. Cecil Dennis Solomon* [*RBI v. Cecil Dennis Solomon*, (2004) 9 SCC 461 : 2004 SCC (L&S) 737] , the Court while analysing the Reserve Bank of India Pension Regulations, 1990, observed thus: (SCC pp. 467-68, paras 10-11)

“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 are not denied.* ...

16. In *UCO Bank v. Sanwar Mal* [*UCO Bank v. Sanwar Mal*, (2004) 4 SCC 412 : 2004 SCC (L&S) 699] , a two-Judge Bench referred to the decision in *Cecil Dennis Solomon* [*RBI v. Cecil Dennis Solomon*, (2004) 9 SCC 461 : 2004 SCC (L&S) 737] and opined thus: (*Sanwar Mal case* [*UCO Bank v. Sanwar Mal*, (2004) 4 SCC 412 : 2004 SCC (L&S) 699] , SCC pp. 417-19, paras 6 & 9)

“... In the case of retirement, voluntary or on superannuation, there is a nexus between retirement and retiral benefits under the Provident Fund Rules. Retirement is allowed only on completion of qualifying service which is not there in the case of resignation. When such a retiree opts for self-financing Pension Scheme, he brings in accumulated contribution earned by him after completing qualifying number of years of

service under the Provident Fund Rules whereas a person who resigns may not have adequate credit balance to his provident fund account (i.e. bank's contribution) and, therefore, Regulation 3 does not cover employees who have resigned. Similarly, in the case of a dismissed employee, there may be forfeiture of his retiral benefits and consequently the framers of the Scheme have kept out the retirees (sic resigned) as well as dismissed employees vide Regulation 22. ...

9. ... The words “resignation” and “retirement” carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is severance of employment (sic is the same) but in service jurisprudence both the expressions are understood differently. Under the Regulations, the expressions “resignation” and “retirement” have been employed for different purpose and carry different meanings. The Pension Scheme herein is based on actuarial calculation; it is a self-financing scheme, which does not depend upon budgetary support and consequently it constitutes a complete code by itself. The Scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. Moreover, resignation brings about complete cessation of master-and-servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service. Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulations/rules framed by the Bank. Resignation can be tendered irrespective of the

length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits. Further, there are different yardsticks and criteria for submitting resignation vis-à-vis voluntary retirement and acceptance thereof. Since the Pension Regulations disqualify an employee, who has resigned, from claiming pension, the respondent cannot claim membership of the fund. In our view, Regulation 22 provides for disqualification of employees who have resigned from service and for those who have been dismissed or removed from service. Hence, we do not find any merit in the arguments advanced on behalf of the respondent that Regulation 22 makes an arbitrary and unreasonable classification repugnant to Article 14 of the Constitution by keeping out such class of employees.”

17. In *Sheelkumar Jain v. New India Assurance Co. Ltd.* [*Sheelkumar Jain v. New India Assurance Co. Ltd.*, (2011) 12 SCC 197] , the Court made a distinction between effect of resignation and voluntary retirement while interpreting the General Insurance (Employees') Pension Scheme, 1995 ...

Be it noted, in the said case it has also been stated that: (*Sheelkumar Jain case*[*Sheelkumar Jain v. New India Assurance Co. Ltd.*, (2011) 12 SCC 197] , SCC p. 206, para 30)

“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.”

8. The aforesaid quotation draws distinction between the terms, resignation, retirement on superannuation, voluntary retirement etc.

The aforesaid terms in the service law have different connotations and consequences. Payment of pension is subject to terms of employment and applicable rules. Resignation, in the absence of specific or implied stipulation to the contrary, leads to forfeiture of past service under Rule 26, and therefore, denial of pension. In case, and if we accept the plea of the petitioner, we would be re-writing the service law and equating resignation with other terms like voluntary retirement, retirement on superannuation or for that matter punishment of compulsory retirement with right to pension.

9. We do not think the petitioner can claim discrimination or violation of Articles 14, 16, 19 or 21 of the Constitution asserting that where punishment of compulsory retirement is imposed, employee is entitled to pension which would be not less than two-thirds. Resignations are entirely distinct and separate. The government neither compels nor forces the employee to leave. On resignation, the employee exercises his/her option and choice to leave employment. Thereupon, the employee is free and can take up employment or do anything he/she wants. The government, even if it wants, cannot compel and force the employee to work for it. It is denied benefit and advantage of the said person as an employee. Noticeably, in cases of dismissal or removal unless otherwise stipulated, an employee would lose his right to pension and retirement benefits. Resignation can be given for varied reasons including employment with third party, self employment or with the intent to avoid disciplinary proceedings.

10. Supreme Court in *C. Jacob versus Director of Geology and Mining and Another*, (2008) 10 SCC 115 had observed:-

"19. ... Entitlement to pension is governed by Chapter V of the said Rules, which enumerates the classes of pension and conditions for entitlement. The enumerated classes of pension are:

	<i>Classes of Pension (vide Chapter V of the Pension Rules)</i>	<i>CCSP Rules</i>	<i>TNP Rules</i>
(i)	Superannuation pension	Rule 35	Rule 32
(ii)	Retiring pension	Rule 36	Rule 33
(iii)	Pension on absorption in or under a corporation, company or body owned/controlled by the State/Central Government	Rule 37 Rule 37-A	Rule 34
(iv)	Invalid pension	Rule 38	Rule 36
(v)	Compensation pension payable on discharge owing to abolition of the post	Rule 39	Rule 38
(vi)	Compulsory retirement pension	Rule 40	Rule 39
(vii)	Compassionate allowance to government servants who forfeit their pension on being dismissed or removed	Rule 41	Rule 40

20. A government servant, whose case does not fall under any of the classes of pensions enumerated in Chapter V, is not entitled to pension. If a government servant is not able to make out entitlement to any class of pension specified in

Chapter V of the Pension Rules, there is no question of having recourse to the Rules in the Chapter dealing with regulation of amount of pension (Chapter VI of the TNP Rules or Chapter VII of the CCSP Rules) for determining the quantum of pension.

21. Admittedly, the petitioner was not “superannuated”; nor was he absorbed in any corporation/company/body owned by the State/Central Government; nor did he retire on account of any infirmity which incapacitated him for service; nor was he discharged on abolition of his post. Nor is he claiming compassionate allowance (on being dismissed/removed after putting in service of an extent which would entitle him to pension but for the dismissal/removal). The only other categories of pension are compulsory retirement pension and the retiring pension. A government servant compulsorily retired from service as a penalty, may be granted by the authority competent to impose such penalty, pension at a rate not less than two-third admissible to him on the date of his compulsory retirement. If a government servant is not otherwise admissible to pension, he cannot obviously be granted pension on compulsory retirement. There is no such grant in this case. That leaves us with retiring pension.

22. Rule 33 of the TNP Rules provides that a retiring pension shall be granted to a government servant who retires, or is retired, in accordance with the provisions of Rule 42 of the said Rules. Rule 42 of the TNP Rules provides that a government servant, who under Fundamental Rule 56(d), retires voluntarily or is required by the appointing authority to retire in public interest shall be entitled to a retiring pension (corresponding Rule 36 of the CCSP Rules which provides that a retiring pension shall be granted to a government servant who retires, or is retired, in advance of the age of compulsory retirement in accordance with the provisions of Rules 48 or 48-A of those Rules or Rule 56 of the Fundamental Rules or Article 459

of the Civil Service Regulations and to a government servant who on being declared surplus, opts for voluntary retirement in accordance with Rule 29 of those Rules). The provision relating to retiring pension makes it clear that a minimum of 20 years' qualifying service is required for retiring pension. It does not entitle a government servant to retiring pension on completion of ten years' service. Therefore, the petitioner is not entitled to retiring pension.”

11. In the present case, as noticed above, the petitioner had himself terminated the relationship of employer-employee way back in February and March, 2000. Now, after a gap of nearly 16-17 years, the petitioner claims that he should be paid pension for he had worked for more than ten years. The representation made by the petitioner was rejected vide order dated 9th December, 2016, which records and also notices the periods of unauthorised absence from duty. Penalty of confinement for 20 days to Quarter Guard and forfeiture of pay and allowances of certain periods were imposed. The petitioner also suffered another penalty of 30 days confinement to lines and forfeiture of pay and allowances on account of 128 days of overstay and desertion. The benefits and payments, in terms of the Rules, upon resignation was paid to the petitioner way back in June and August, 2000. Another amount towards GPF payment was made on 31st January, 2001. Pension and other retirement benefits on retirement were denied, as they were not granted on resignation. This was accepted.

12. In view of the aforesaid position, we are not inclined to issue notice in the present writ petition. Assuming the right to pension is a continuing cause of action, even on merits, we do not think the matter

SEPTEMBER 22, 2017
VKR

NAVIN CHAWLA, J.

SEPTEMBER 22, 2017
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