2026:HHC:7141

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.5019 of 2020
Decided on: 12th March, 2026

Phulamu Devi .....Petitioner

versus

State of H.P and others ...Respondents

Coram

Hon'ble Mr.Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?[1] Yes

For the petitioner: **Mr.Anil Chauhan, Advocate.**

For the respondents: **Mr.Rupinder Singh, Additional Advocate General with Mr.Sikander Bhushan, Deputy Advocate General.**

Jiya Lal Bhardwaj, Judge (Oral)

By way of present petition, the petitioner being widow of deceased Ranjha Ram, who was working with the respondents-Department and resigned from service w.e.f. 13.08.2003, has prayed for grant of the following substantive reliefs:-

> *"a). That the respondent may be directed to release/grant the family pension to the applicant.*
>
> *b) That the direction may kindly be issued to the respondents that all the pensionary benefits due from the date the pension is payable to the husband of the applicant may be released to the applicant with interest etc. in the interest of justice and fair play.*
>
> *c) That this Hon'ble Court may kindly be pleased to issue writ in the nature of Mandamus, thereby directing the*

[1] *Whether the reporters of Local Papers may be allowed to see the judgment? Yes.*

respondents to grant the applicant/petitioner compassionate allowances as admissible to him as per the law."

2. Shorn of unnecessary details, the key facts of the case are that the husband of the applicant was appointed with the respondents-State as Helper. As per pleadings in the petition, he had worked with the respondents-State w.e.f. 01.11.1983 to 30.12.1996. Thereafter, he was conferred work charge status w.e.f. 01.01.1997 vide office order dated 22.05.1998

3. The husband of the petitioner had resigned from service on 13.08.2003, which resignation was accepted vide letter dated 17.11.2003 w.e.f. 13.08.2003 (Annexure R-1).

4. The applicant being the widow had filed the present petition seeking the relief that since the husband of the applicant had worked for 13 years as daily waged Helper and thereafter for seven years on work charge basis, her husband was entitled to pension. However, the respondents-State did not take any call on his requests. After his death, the petitioner made repeated verbal and written requests for grant of family pension to her, but till date nothing has been done by the respondents in writing and they verbally told her that she is not entitled to pension. The action on the part of

the respondents not to grant her pension is highly illegal, arbitrary and against the principles of natural justice and not sustain in the eyes of law.

5. The respondents filed reply to petition and have admitted that the husband of the petitioner was conferred with the work charge status w.e.f. 01.01.1997. However, his resignation was accepted on 17.11.2003 with effect from the date of tendering resignation i.e. on 13.08.2003. It has been averred that the husband of the petitioner had rendered only 6 years, 7 months and 13 days of regular service, including work charge service, which is less than required 10 years of regular service, including work charge service as per CCS (Pension) Rules, 1972 for becoming entitled to pension. It has further been averred that the husband of the petitioner had tendered his resignation with the Executive Engineer and, therefore, as per provisions of Rule 26 of the CCS (Pension) Rules, 1972, once an employee tenders his resignation from service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service. Hence, the petitioner's husband was not entitled for benefit of subsequent changes in law as well as policy.

6. I have heard Mr.Anil Chauhan, learned counsel representing the petitioner and Mr.Sikander Bhushan, learned Deputy Advocate General for the State and carefully perused the record.

7. Before adverting to the facts of the case, it would be relevant to quote Rule 26 of the CCS (Pension) Rules, 1972, under which the case of the petitioner is to be adjudicated. Rule 26 reads as under:-

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

8. Learned counsel for the petitioner vehemently argued that since the husband of the petitioner had rendered services with the respondents and further as per law laid down by the Hon'ble Supreme Court in *Sunder Singh's* case, he was entitled to pension, once he had rendered 6 years, 7 months and 13 days services with the respondents. Learned counsel for the petitioner has submitted that in the case of an employee whose services were dismissed, the Hon'ble Supreme Court had granted the compassionate allowance and, therefore,the petitioner being the legal heir, be also granted the same benefits. He placed heavy reliance upon the

judgments of the Hon'ble Supreme Court in ***Sheel Kumar Jain*** vs. ***New India Assurance Company Limited and others, (2011) 12 SCC 197***, ***Asger Ibrahim Amin*** vs. ***Life Insurance Corporation of India, (2016) 13 SCC 797*** as well as judgment passed by the Delhi High Court in ***Mukul Sanwal*** vs. ***Union of India (2019) 4 SCT 167***.

9. In the judgment of *Sheel Kumar Jain's* case (supra), referred by Mr.Anil Chauhan, the Hon'ble Supreme Court had held that the 1995 Pension Scheme was framed and notified in the year 1995, yet the same was made applicable to the employees also who had left the service before 1995 and when employee had served the letter on 16.09.1991 for resignation, the scheme was not in existence. Thus, the said judgment is not applicable to the facts of the present case.

10. Another judgment referred by learned counsel for the petitioner in *Asger Ibrahim Amin's* case (supra), no doubt the Hon'ble Supreme Court had held that the appellant in that case ought not to have been deprived of pension benefits merely because of his resignation. However, both the above judgments rendered by Hon'ble two-Judge Benches were considered later on by Hon'ble three-Judge Bench in ***Senior***

Divisional Manager, Life Insurance Corporation of India and others vs. ***Shree Lal Meena, (2019) 4 SCC 479*** wherein it was held that once an employee tenders resignation, he forfeits his services and is not entitled for the pensionary benefits. The relevant paras 19 to 27 and 31 to 37 of the judgment are reproduced hereinbelow:-

> *"19. What is most material is that the employee in this case had resigned. When the Pension Rules are applicable, and an employee resigns, the consequences are forfeiture of service, under Rule 23 of the Pension Rules. In our view, attempting to apply the Pension Rules to the respondent would be a self-defeating argument. As, suppose, the Pension Rules were applicable and the employee like the respondent was in service and sought to resign, the entire past service would be forfeited, and consequently, he would not qualify for pensionary benefits. To hold otherwise would imply that an employee resigning during the currency of the Rules would be deprived of pensionary benefits, while an employee who resigns when these Rules were not even in existence, would be given the benefit of these Rules.*
>
> *20. Now turning to the discussion of the judicial pronouncements in this behalf, we are of the view that any judgment has to be read for the law it lays down, by reference given to a factual matrix. Lines or sentences here and there should not be read in absolute terms, de hors the factual matrix in the context of which those observations were made.*
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> *21. The judgment in JK Cotton Spinning & Weaving Mills Co. Ltd., Kanpur has, thus, to be considered in that context. What was the issue in that case? The first paragraph of the judgment itself clarifies that aspect. Whether determination of an employer-employee relationship amounted to retrenchment, within the meaning of the provisions of the Act applicable is what was being looked into. We have already noticed, while referring to the facts of that case hereinbefore, that the employee in question tried to act clever by half. He*

firstly resigned. The resignation was accepted and the consequent monetary benefit flowed to him. Thereafter, he sought to bring his resignation within the meaning of 'retrenchment' under Section 2(s) read with Section 6N of the Uttar Pradesh Industrial Disputes Act, 1947. The definition of 'retrenchment' itself clearly excluded voluntary retirement of the workman. The employee, having voluntarily resigned, the termination of relationship of employer and employee could not come within the meaning of 'retrenchment'. This Court analysed the difference between the meaning of resignation and retrenchment. The resignation was voluntary. It is in this context that it was observed that a voluntary tendering of resignation would be similar to voluntary retirement and not retrenchment. Nothing more and nothing less. Thus, in our view, the High Court, both the learned Single Judge and the Division Bench, appeared to have read much more into this judgment than the legal proposition which it sought to propound.

22. The principles in the context of the controversy before us are well enunciated in the judgment of this Court in Reserve Bank of India &Anr. v. Cecil Dennis Solomon & Anr.8 On a similar factual matrix, the employees had resigned some time in 1988. The RBI Pension Regulations came in operation in 1990. The employees who had resigned earlier sought applicability of these Pension Regulations to themselves. The provisions, once again, had a similar clause of forfeiture of service, on resignation or dismissal or termination. The relevant observations are as under:-

> *"10. In service jurisprudence, the expressions "superannuation","voluntary retirement", "compulsory retirement" and "resignation" convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same is not*

denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary. In Punjab National Bank v. P.K. Mittal [AIR 1989 SC 1083] on interpretation of Regulation 20(2) of the Punjab National Bank Regulations, it was held that resignation would automatically take effect from the date specified in the notice as there was no provision for any acceptance or rejection of the resignation by the employer. In Union of India v. Gopal Chandra Misra [(1978) 2 SCC 301] it was held in the case of a judge of the High Court having regard to Article 217 of the Constitution that he has a unilateral right or privilege to resign his office and his resignation becomes effective from the date which he, of his own volition, chooses. But where there is a provision empowering the employer not to accept the resignation, on certain circumstances e.g. pendency of disciplinary proceedings, the employer can exercise the power.

11. On the contrary, as noted by this Court in Dinesh Chandra Sangma v. State of Assam [(1977) 4 SCC 441] while the Government reserves its right to compulsorily retire a government servant, even against his wish, there is a corresponding right of the government servant to voluntarily retire from service. Voluntary retirement is a condition of service created by statutory provision whereas resignation is an implied term of any employer-employee relationship."

23. In our view, the aforesaid principles squarely apply in the facts of the present case and the relevant legal principles is that voluntary retirement is a concept read into a condition of service, which has to be created by a statutory provision, while resignation is the unilateral determination of an employer-employee relationship, whereby an employee cannot be a bonded labour.

24. In UCO Bank &Ors. v. Sanwar Mal, once again, in the case of a similar pension scheme, the observations were made as under:

> *"6. To sum up, the Pension Scheme embodied in the regulation is a selfsupporting scheme. It is a code by itself. The Bank is a contributor to the pension fund. The Bank ensures availability of funds with the trustees to make due payments to the beneficiaries under the Regulations. The beneficiaries are employees covered by Regulation 3. It is in this light that one has to construe Regulation 22 quoted above. Regulation 22 deals with forfeiture of service. Regulation 22(1) states that resignation, dismissal, removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. In other words, the Pension Scheme disqualifies such dismissed employees and employees who have resigned from membership of the fund. The reason is not far to seek. In a self-financing scheme, a separate fund is earmarked as the Scheme is not based on budgetary support. It is essentially based on adequate contributions from the members of the fund. It is for this reason that under Regulation 11, every bank is required to cause an investigation to be made by an actuary into the financial condition of the fund from time to time and depending on the deficits, the Bank is required to make annual contributions to the fund. Regulation 12 deals with investment of the fund whereas Regulation 13 deals with payment out of the fund. 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. Further, the pension payable to the beneficiaries under the Scheme would depend on income accruing on investments and unless there is adequate corpus, the Scheme may not be workable and, therefore, Regulation 22 prescribes a disqualification to dismissed employees and employees who have resigned. Lastly, as stated above, the Scheme contemplated pension as the second retiral benefit in lieu of employers' contribution to contributory provident fund. Therefore, the said Scheme was not a continuation of the earlier scheme of provident fund. As a new scheme, it was entitled to keep out dismissed employees and employees who have resigned.

7. In the light of our above analysis of the scheme, we now proceed to deal with the arguments advanced by both the sides. It was inter alia urged on behalf of the appellant bank that under Regulation 22, category of employees who have resigned from the service and who have been dismissed or removed from the service are not entitled to pension, that the pension scheme constituted a separate fund to be regulated on self financing principles, that prior to the introduction of the pension scheme, there was in existence a provident fund scheme and the present scheme conferred a second retiral benefit to certain classes of employees who were entitled to become the members/beneficiaries of the fund, that the membership of the fund was not dependent on the qualifying service under the pension scheme, that looking to the financial implications, the scheme framed mainly covered retirees because retirement presupposed larger number of years of service, that in the case of resignation, an employee can resign on the next day of his appointment whereas in the case of retirement, the employee is required to put in a certain number of years of service and consequently, the scheme was a separate code by itself, that the High Court has committed manifest error in decreeing the suit of the respondent inasmuch as it has not considered the relevant factors contemplated by the said scheme and that

the pension scheme was introduced in terms of the settlement dated 29.10.1993 between the IBA and All-India Bank Employees' Association, which settlement also categorically rules out employees who have resigned or who have been dismissed/removed from the service."

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"9. We find merit in these appeals. 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. The view we have taken is supported by the judgment of this Court in the case of Reserve Bank of India v. Cecil Dennis Solomon &Anr. (supra). Before concluding we may state that Regulation 22 is not in the nature of penalty as alleged. It only disentitles an employee who has resigned from service from becoming a member of the fund. Such employees have received their retiral benefits earlier. The Pension Scheme, as stated above, only provides for a second retiral benefit. Hence, there is no question of penalty being imposed on such employees as alleged. The Pension Scheme only provides for an avenue for investment to retirees. They are provided avenue to put in their savings and as a term or condition which is more in the nature of an eligibility criterion, the Scheme disentitles such category of employees as are out of it."

25. We may only note that in the above discussed judgment, an argument assailing the Regulation for forfeiture of service, based on Article 14 of the Constitution of India was repelled. The provisions under the new Regulations were held not to be in the nature of penalty, but a disentitlement, as a consequence of having resigned from service and, thus, being disentitled from having become a member of the fund. There are other judgments also in the same line, but not laying down any additional principles and, thus, it would suffice to just mention them, i.e. M.R. Prabhakar &Ors. v. Canara Bank & Ors. and J.M. Singh v. Life Insurance Corporation of India &Ors.

26. There are some observations on the principles of public sectors being model employers and provisions of pension being beneficial legislations. We may, however, note that as per what we have opined aforesaid, the issue cannot be dealt with on a charity principle. When

the Legislature, in its wisdom, brings forth certain beneficial provisions in the form of Pension Regulations from a particular date and on particular terms and conditions, aspects which are excluded cannot be included in it by implication. The provisions will have to be read as they read unless there is some confusion or they are capable of another interpretation. We may also note that while framing such schemes, there is an important aspect of them being of a contributory nature and their financial implications. Such financial implications are both, for the contributors and for the State. Thus, it would be inadvisable to expand such beneficial schemes beyond their contours to extend them to employees for whom they were not meant for by the Legislature.

27. We are, thus, of the view that the impugned orders in this case cannot be sustained and are liable to be set aside, and the writ petition filed by the respondent consequently stands dismissed.

28 to 30. xxxx xxxx xxx

31. The last relevant aspect is that the 1995 Scheme provided in clause 22 as under:

> *"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."*

32. Thus, once again, there is this clause of forfeiture of service in case of resignation.

33. In order to elucidate the legal principle further, we may note that Sheel Kumar Jain took note of the judgment of the three Judges' Bench in Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd. & Ors. An uncovenanted employee of respondent-Company, paid on a monthly basis, sought to recover a sum as gratuity, for continued service rendered over 29 years, under the Retiring Gratuity Rules, 1937, after having resigned from service. The employee was paid the provident fund dues. The High Court of Patna opined against the employee. When the matter reached this Court, one of

the contentions raised by the respondent Company was that the employee had resigned and not retired from service. It was noticed that Rule 1(g) defines 'retirement' as "the termination of service by reason of any cause other than removal by discharge due to misconduct." The employee had not been removed by discharge due to misconduct. The termination of service, being on account of resignation, it was held to qualify within the definition of 'retirement' under the Rules. The rest of the judgment, dealing with the principles as to how gratuity should be treated, is not relevant.

34. We, thus, notice that all that was opined by the three Judges' Bench in the aforesaid case was based on the definition of 'retirement' as per the Retiring Gratuity Rules, 1937, which was expansive and all inclusive, excluding only the removal by discharge due to misconduct. Thus, nothing more could have been read into this judgment.

35. We may also add that there are some observations in the aforesaid case that pension and gratuity are both retiral benefits and an employee, with long years of service should be assured social security to some extent, in the form of either pension or gratuity or provident fund, whichever retiral benefit is operative in the industrial establishment. In the given facts of the appeal before us, the benefit of provident fund has been given as that was the scheme applicable at the relevant stage of time. The principle laid down is not that all of them should be simultaneously be granted, but that, at least one of them should be granted, though there is no prohibition against more than one being granted.

36. In view of what we have discussed aforesaid, all three aspects stated by us are relevant and disentitle the appellant to any relief. We have already explained the difference between resignation and voluntary retirement. Mere categorisation by the appellant himself of his resignation as "premature retirement" is of no avail. The same principle discussed aforesaid, of forfeiture of service, would be applicable here and the appellant did not have the requisite age when he resigned even were the 1976 Scheme to be made applicable.

37. We may also find that the appellant remained silent for years together and that this Court, taking a

> *particular view subsequently, in Sheel Kumar Jain, would not entitle stale claims to be raised on this behalf, like that of the appellant. In fact the appellant slept over the matter for almost a little over two years even after the pronouncement of the judgment."*

11. Learned counsel for the petitioner vehemently argued that similar preposition had come before the High Court of Delhi, wherein the Court has considered the similar provisions and held that a person who is dismissed or removed from service and found guilty of mis-conduct, cannot be said to be on better footing than the person who tenders his resignation, even if the Government would disclose reasons denying the pension, his case for grant of compassionate allowance, which cannot exceed two-third of retiral benefits, would have been considered.

12. Once the Hon'ble Supreme Court had occasion to deal with similar preposition of law, this Court is not persuaded to agree with the view taken by the Delhi High Court. Further, the Hon'ble Supreme Court in the case ***BSES Yamuna Power Ltd.*** vs. ***Ghanshyam Chand Sharma and another, (2020) 3 SCC 346,*** had again the occasion to deal with the issue of grant of pension after acceptances of resignation and held that there is material distinction between the concept of resignation and voluntary retirement

and further the view taken by the Court in *Asger Ibrahim Amin's* case (supra) was disapproved and the Court held that the provisions providing for voluntary retirement would not apply retrospectively by implication, where an employee has resigned from service, there arises no question of whether he has in fact 'voluntarily retired' or 'resigned'. After considering the provisions of Rule 26 of the Central Civil Service Pension Rules, 1972, returned the findings that if the Court was to re-classify his resignation as a case of voluntary retirement, this would obfuscate the distinction between the concepts of resignation and voluntary retirement inasmuch as the very import of Rule 26 would be negated and such an approach cannot be adopted. The relevant paras 10 to 17 of the judgment are reproduced hereunder:-

> *"10. In Shree Lal Meena II, upholding the interpretation in Shree Lal Meena I, Justice Sanjay Kishan Kaul speaking for the three judge Bench, noted that the retrospective application of the provision on voluntary retirement in the LIC Pension Rules would lead to an absurd result:*
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> > *"19. What is most material is that the employee in this case had resigned. When the Pension Rules are applicable, and an employee resigns, the consequences are forfeiture of service, under Rule 23 of the Pension Rules. In our view, attempting to apply the Pension Rules to the respondent would be a self-defeating argument. As, suppose, the Pension Rules, were applicable and the employee like the respondent was in service and sought to resign, the entire past service would be forfeited, and consequently, he would not qualify for pensionary benefits. To hold otherwise would*

> *imply than an employee resigning during the currency of the Rules would be deprived of pensionary benefits, while an employee who resigns when the Rules were not even in existence, would be given the benefit of these Rules."*
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> *(Emphasis supplied)*

11. The Court noted that, if the approach followed in Asger Ibrahim Amin was adopted in interpreting the LIC Pension Rules, an employee who resigned after the enactment of the rules would not be entitled to pensionary benefits but an employee who had resigned when the rules were not in force, but had completed the prescribed period of service for voluntary retirement, would be entitled to pensionary benefits. Such an outcome could not be countenanced and would render nugatory the provision which stipulated that upon resignation, past service stood forfeited.

12. The Court in Shree Lal Meena II elucidated the distinction between resignation and voluntary retirement in the following terms:

> *"22. . [quoting RBI v Cecil Dennis Solomon (2004) 9 SCC 461].*
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> *"10. In service jurisprudence, the expressions "superannuation",voluntary retirement","compulsory ret irement" 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 the prescribed period of qualifying service. Another fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in the case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary."*

The above observations highlighted the material distinction between the concept of resignation and voluntary retirement. The Court also observed that while pension schemes do form beneficial legislation in a

delegated form, a beneficial construction cannot run contrary to the express terms of the provisions:

> *"26. There are some observations on the principles of public sectors being model employers and provisions of pension being beneficial legislations (S.D. vs. CBI) (see Asger Ibrahim Amin v LIC). We may, however, note that as per what we have opined aforesaid, the issue cannot be dealt with on a charity principle. When the legislature, in its wisdom, brings forth certain beneficial provisions in the form of Pension Regulations from a particular date and on particular terms and conditions, aspects which are excluded cannot be included in it by implication."*

13. The view in Asger Ibrahim Amin was disapproved and the court held that the provisions providing for voluntary retirement would not apply retrospectively by implication. In this view, where an employee has resigned from service, there arises no question of whether he has in fact "voluntarily retired" or "resigned". The decision to resign is materially distinct from a decision to seek voluntary retirement. The decision to resign results in the legal consequences that flow from a resignation under the applicable provisions. These consequences are distinct from the consequences flowing from voluntary retirement and the two may not be substituted for each other based on the length of an employee's tenure.

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

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

Rule 26 states that upon resignation, an employee forfeits past service. We have noted above that the approach adopted by the court in Asger Ibrahim Amin has been held to be erroneous since it removes the important distinction between resignation and voluntary retirement. Irrespective

of whether the first respondent had completed the requisite years of service to apply for voluntary retirement, his was a decision to resign and not a decision to seek voluntary retirement. If this court were to re-classify his resignation as a case of voluntary retirement, this would obfuscate the distinction between the concepts of resignation and voluntary retirement and render the operation of Rule 26 nugatory. Such an approach cannot be adopted. Accordingly, the finding of the Single Judge that the first respondent "voluntarily retired" is set aside.

15. We now turn to the question of whether the first respondent had completed twenty years in service. During the present proceedings, our attention was drawn to the fact that the first respondent had applied for voluntary retirement on 14 February 1990. By a letter dated 25 May 1990 the appellant denied the first respondent's application for voluntary retirement on the ground that the first respondent had not completed twenty years of service. It was thus urged that the appellant's decision to deny the first respondent voluntary retirement was illegal as the first respondent had completed twenty years of service.

16. This argument cannot be accepted. Even if he was denied voluntary retirement on 25 May 1990, the first respondent did not challenge this decision but resigned, on 7 July 1990. The denial of voluntary retirement does not mitigate the legal consequences that flow from resignation. No evidence has been placed on the record to show that the first respondent took issue with the denial of voluntary retirement between 25 May 1990 and 7 July 1990. To the contrary, in the legal notice dated 1 December 1992 sent by the first respondent to the appellant, the first respondent admitted to having resigned. The first respondent's writ petition was instituted thirteen years after the denial of voluntary retirement and eventual resignation. In the light of these circumstances, the denial of voluntary retirement cannot be invoked before this Court to claim pensionary benefits when the first respondent has admittedly resigned.

17. On the issue of whether the first respondent has served twenty years, we are of the opinion that the question is of no legal consequence to the present dispute. Even if the first respondent had served twenty years, under Rule 26 of the CCS Pension Rules his past service stands forfeited upon resignation. The first respondent is therefore not entitled to pensionary benefits."

13. In the present case, the resignation tendered by the husband of the petitioner was accepted by the respondent authorities on 17.11.2003 w.e.f. 13.08.2003. The petitioner being the widow of deceased had filed the petition in the year 2018. There is no murmur in the entire petition that why the petitioner did not come to the Court earlier. No document has been placed on record that during the lifetime of the husband of the petitioner, he had ever approached the competent Court of law. The petition was filed by the petitioner under Section 19 of the Administrative Tribunals Act, 1985 before the Tribunal and as per provisions contained under the Administrative Tribunals Act, 1985, the specific period is provided to institute the application for redressal of grievances. If the representation made is not decided within a period of six months, an employee can file original application within one year from the date of said period of six months. The Hon'ble Supreme Court has also considered this aspect in the judgment in *Shree Lal Meena's* case (supra) and has given specific findings that stray claims cannot be raked up.

14. Therefore, in view of the aforesaid position of law, once the petitioner had resigned from service and his resignation was accepted, the petitioner is not entitled for any

relief as claimed in the writ petition, firstly, on the point of law and secondly, the claim being stale claim.

15. Consequently, the writ petition being devoid of merit as well as on account of delay and laches is dismissed. However, with no orders as to cost.

16. Pending applications, if any, also stand disposed of.

(**Jiya Lal Bhardwaj**)
Judge

March 12, 2026
(naveen)