Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.14739 OF 2015
(@ Special Leave Petition (Civil) No. 24108 of 2012)

Senior Divisional Manager, Life Insurance Corporation of India Ltd. & Ors. ...Appellant(s)

Versus

Shree Lal Meena ...Respondent(s)

O R D E R

Dipak Misra, J.

Leave granted.

2. The present appeal, by special leave, is directed against the judgment and order dated 16.08.2011 passed by the Division Bench of the Rajasthan High Court at Jaipur Bench in D.B. Civil Special Appeal (Writ) No. 172 of 2008 in S.B. Civil Writ Petition No. 6026 of 2007 wherein the writ Court had allowed the Writ Petition preferred by the respondent-employee, for grant of retiral benefits from the Life Insurance Corporation of India Ltd. (for brevity, "the Corporation") on

the basis of the Life Insurance Corporation (Employees) Pension Rules, 1995 (for short, "the 1995 Rules").

3. The facts, in nutshell, are that the respondent on 15.06.1990 sent a letter to the competent authority of the Corporation seeking voluntary retirement on the ground of illness of his wife. As the said letter was not responded to, he wrote another letter on 18.06.1990 to the Senior Divisional Manager of the Corporation, Jaipur reiterating his prayer for voluntary retirement. The said letter was also not responded to. Thereafter, the respondent on 14.07.1990, sent the letter of resignation from the services of the Corporation with immediate effect. There was a prayer for waiver of notice in the said letter. The request of the respondent seeking resignation and also waiver of the notice period was acceded to by the Corporation vide letter dated 11.01.1991.

4. When the matter stood thus, in the year 1995, the Corporation brought into force the 1995 Rules with retrospective effect from 01.11.1993. After the 1995 Rules came into force, the respondent submitted a representation for grant of pension under the 1995 Rules, stating therein that the said Rules were applicable to him in terms of Rule 3 as he was in service of the Corporation on the 1st day of January, 1986 and had retired having sought voluntary retirement

before the 1st day of November, 1993. The said representation was replied to by the Corporation vide letter dated 06.04.1996 stating that the respondent had, in fact, resigned from service of the Corporation and hence, he was not entitled to the grant of pension as per the 1995 Rules.

5. After receipt of the said reply, the respondent entered into further communication with the Corporation asserting his claim but as his request was not paid heed to, he preferred the Writ Petition. As indicated earlier, the learned single Judge vide order dated 08.09.2006 allowed the Writ Petition. It is demonstrable from the order of the learned single Judge that he posed the question whether the resignation of the employee could be treated as retirement. He placed reliance on ***J.K. Cotton Spinning and Weaving Mills Company Ltd. v. State of U.P. and Ors***[1] and on that basis, came to hold as follows:-

> "Here, in the instant case, voluntary retirement was sought though it was considered as a resignation which was accepted on 11.1.91. The Petitioner retired or his resignation was accepted with effect from 14.7.90 which is admittedly prior to 1st day of November, 1993. Thus, it is crystal clear that the scheme is applicable to the petitioner also."

6. Being of the said opinion, the learned single Judge directed

1 AIR 1990 SC 1808 : (1990) 4 SCC 27

grant of retiral benefits to the respondent, as per the 1995 Rules with effect from the date of his resignation, that is, 12.07.1990 with 6% interest within a period of six months.

7. Being grieved by the aforesaid order, the Corporation preferred an intra-court appeal wherein it was contended that the 1995 Rules could not have been made applicable to the respondent, for the respondent had sought resignation which was accepted, and therefore, he could not be equated with an employee who had voluntarily retired. On behalf of the respondent, it was urged before the Division Bench that regard being had to the fact that at the time of writing of letter dated 14.07.1990, there was no specific provision for seeking voluntary retirement under the Life Insurance Corporation of India (Staff) Regulations, 1960 (for short, "the 1960 Regulations") and in that backdrop, the resignation has to be treated as retirement. The principle stated in ***J.K. Cotton Spinning and Weaving Mills Company Ltd.*** case (supra) was pressed into service. Stress was laid on the pronouncements in ***Jaipal Singh v. Sumitra Mahajan (Smt.) and another***[2] and ***Padubidri Damodar Shenoy v. Indian Airlines Limited and another***[3].

8. The Division Bench took note of the decision in ***J.K. Cotton***

2 2004 (4) SCC 522
3 2009 (10) SCC 514

Spinning and Weaving Mills Company Ltd. case (supra), adverted to the aspect that in 1990 there was no provision for voluntary retirement, appreciated the ratio in ***Jaipal Singh***'s case (supra) wherein a difference had been drawn between voluntary retirement and resignation, analysed the language employed in Rule 3 of the 1995 Rules that deals with application of the Rules and came to hold as follows:-

> "Thus, the Pension Rules permit voluntary retirement and entitlement to pension on completion of 20 years of qualifying service. Under Rule 19 of the Life Insurance Corporation of India Regulations, 1960 speaks of resignation prior to the amendment in the year 1996 and even in the case of resignation the employee concerned is supposed to give a notice of three months to the employer-Corporation and it was only on the acceptance of the resignation that the employee on the expiry of the three months notice period could be allowed to leave on acceptance of resignation. The aforesaid provisions which only spoke of resignation prior to 1996 on the touchstone of Jaipal Singh's case (supra) the so-called resignation submitted by the petitioner-respondent notwithstanding the fact that the regulations do not speak of voluntary retirement, the petitioner sought permission of the employer and requested for waiving three months notice period. The conditions which have been enumerated hereinabove when applied to the facts of the present case clearly show that notwithstanding the fact that the term "voluntary retirement" in the Staff Regulations of LIC of 1960 prior to the amendment of 1996 had not been used, the use of word "resignation" in the Regulation 19 would on the touchstone of the judgment of Jaipal Singh's case (supra) amount to nothing but seeking voluntary retirement in the facts of the present case."

9. Being of this view, the Division Bench dismissed the appeal and affirmed the view expressed by the learned single Judge.

10. We have heard Mr. D.N. Goburdhan, learned counsel for the appellants and Mr. Ansar Ahmad Chaudhary, learned counsel for the respondent.

11. It is not in dispute that at the time of request made by the respondent seeking voluntary retirement, the regulations in the field, that is, the 1960 Regulations, did not provide for voluntary retirement. After the 1995 Rules came into force, the concept of voluntary retirement was introduced for the first time. The 1995 Rules were made applicable to the employees who stood superannuated or had sought voluntary retirement after completing 20 years of qualifying service by giving notice of 90 days. The relevant rules of 1995 Rules are Rule 3, Rule 31 and Rule 34. We have already mentioned that Rule 3 deals with application of the Rules to the employees. It comes under the heading "Application and Eligibility". Rule 31 and Rule 34 come under the heading "Classes of Pension". To have a proper appreciation of the controversy in issue, it is appropriate to reproduce relevant parts of Rule 3, Rule 31 and Rule 34 of the 1995 Rules which read as under:-

> "**Rule 3. Application** - These rules shall apply to employees who,-

(1) (a) were in the service of the Corporation on or after the 1st day of January, 1986 but had retired before the 1st day of November, 1993; and

(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (b), the entire amount of the Corporation's contribution to the Provident Fund including interest accrued thereon together with a further simple interest at the rate of six per cent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Corporation; or

(2) (a) have retired on or after the 1st day of November, 1993 but before the notified date; and

(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (b), the entire amount of the Corporation's contribution to the Provident Fund and interest accrued thereon together with a further simple interest at the rate of twelve per cent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Corporation; or ....

x x x x x

Rule 31. 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-rule 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-rule 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-rule (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-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than ninety days giving reasons therefor;

(b) on receipt of a request under clause (a), the appointing authority may, subject to the provisions of sub-rule (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 rule 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 rule 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 rule shall be based on the average emoluments as defined under clause (d) of rule 2 of these rules and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension.

x x x x x

Rule 34. Payment of pension or family pension in respect of employees who retired or died between 1.1.1986 and 31.10.1993 –

(1) Employees who have retired from the service of the Corporation between the 1st day of January, 1986 and the 31st day of October, 1993 shall be eligible for pension with effect from the 1st day of November, 1993.

(2) The family of a deceased employee governed by the provisions contained in sub-rule (7) of rule 3 shall be eligible for family pension with effect from the Ist day of November, 1993."

12. It is submitted by Mr. Goburdhan, learned counsel for the appellants that the 1995 Rules only cover the employees who had retired before the 1st of November, 1993 and the concept of grant of pension on voluntary retirement has to be prospective because in the

year 1993 there was no provision for voluntary retirement. Learned counsel would submit that if all the Rules are read in a conjoint manner, a situation which could not have been present in the past is not meant to be brought within or covered. According to the learned counsel, an employee would be entitled to get pension if he retired or died between 01.01.1986 and 31.10.1993 and it would be inappropriate to construe the term resignation as voluntary retirement.

13. Learned counsel for the respondent, per contra, would contend that the Court has already interpreted the 1960 Regulations and the 1995 Rules keeping in view the concept of beneficial legislation and, therefore, the controversy should be allowed to rest and there is no justification to interfere with the impugned order.

14. To appreciate the controversy in hand, we are required to understand the principles stated in ***J.K. Cotton Spinning and Weaving Mills Company Ltd.*** (supra). In the said case, the question posed by the Court was when the service of an employee is terminated consequent upon the employer accepting the resignation voluntarily tendered by the employee, does the termination so brought about amount to "retrenchment" within the meaning of Section 2(s) read with Section 6-N of the Uttar Pradesh Industrial

Disputes Act, 1947 (for short, "the State Act"). The High Court dealing with the issue came to the conclusion that the termination of service of the employee fell within the definition of "retrenchment" as enshrined in Section 2(s) of the State Act. The Court adverted to the definition under Section 2(s) of the State Act which defines "retrenchment" to mean the termination by the employer of the service of a workman for any reason whatsoever, otherwise than punishment inflicted by way of disciplinary action but did not include voluntary retirement of the workman or retirement of the workman on reaching the age of superannuation, if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf. The Court referred to Section 6-N of the State Act which provided conditions precedent for retrenchment of a workman. The two-Judge Bench observed that provisions are *pari materia* with the 1947 Act. Be it noted, the Court further posed a question whether an employee whose resignation has been accepted by the employer falls within the first exclusion clause of the definition of the term "retrenchment". The Court took note of the fact that the employee had tendered his resignation voluntarily and the termination of service was brought about by the acceptance of resignation. The Court referred to dictionary meaning of the term

"resign" and the meaning of "retire". We think it appropriate to reproduce the discussion from the said judgment:-

> "6. … The meaning of the terms 'resign' and 'retire' in different dictionaries is as under :
>
> | Name of the Dictionary | Meaning of 'Resign' | Meaning of 'Retire' |
> |---|---|---|
> | Black's *Law Dictionary* (5th edn.) | Formal renouncement or relinquishment of an office | To terminate employment or service upon reaching retirement age |
> | *Shorter Oxford English Dictionary* (Revised edn. of 1973) | To relinquish, surrender, give up or hand over (something); esp., an office, position, right, claim, etc. To give up an office or position; to retire. | The act of retiring or withdrawing to or from a place or position |
> | *The Random House Dictionary* (College edn.) | To give up an office, position etc.; to relinquish (right, claim, agreement etc.) | To withdraw from office, business or active life. |
>
> 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 any more. 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 Corporation* v. *Brojo Nath Ganguly*[4] this Court observed as under : (SCC p. 228, para 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".

8. In the present case the employee's request contained in the letter of resignation was accepted by the employer and that brought an end to the contract of service. The meaning of term 'resign' as found in the *Shorter Oxford Dictionary* includes 'retirement'. Therefore, when an employee voluntarily tenders his resignation it is an act by which he voluntarily gives up his job. We are, therefore, of the opinion that such a situation would be covered by the expression 'voluntary retirement' within the meaning of clause (*i*) of Section 2(s) of the State Act. In *Santosh Gupta V. State Bank of Patiala*[5] case Chinnappa Reddy, J. observed as under : (SCC p. 342, para 5)

> "Voluntary retrenchment of a workman or the retrenchment of the workman on reaching the age of

4 (1986) 3 SCC 156, 228
5 (1980) 3 SCC 340

> superannuation can hardly be described as termination, by the employer, of the service of a workman."
>
> (Here the word 'retrenchment' has reference to 'retirement'.)

> The above observation clearly supports the view which commends itself to us. We are, therefore, of the opinion that the High Court was not right in concluding that because the employer accepted the resignation offer voluntarily made by the employee, he terminated the service of the employee and such termination, therefore, fell within the expression 'retrenchment' rendering him liable to compensate the employee under Section 6-N. We are also of the view that this was a case of 'voluntary retirement' within the meaning of the first exception to Section 2(s) and therefore the question of grant of compensation under Section 6-N does not arise. We, therefore, cannot allow the view of the High Court to stand."

We have referred to the said decision in detail as the High Court has placed heavy reliance on the same.

15. In ***Reserve Bank of India and another v. Cecil Dennis Solomon and another***[6], the Court while analysing the Reserve Bank of India Pension Regulations, 1990, observed thus:-

> "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.

6 (2004) 9 SCC 461

> 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*[7] 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*[8] 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.
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> 11. On the contrary, as noted by this Court in *Dinesh Chandra Sangma* v. *State of Assam*[9] 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."
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> [emphasis added]

16. In ***UCO Bank and others v. Sanwar Mal***[10], a two-Judge Bench referred to the decision in ***Cecil Dennis Solomon*** (supra) and opined thus:-

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7 1989 Supp. (2) SCC 175
8 (1978) 2 SCC 301
9 (1977) 4 SCC 441
10 (2004) 4 SCC 412

"6. To sum up, the Pension Scheme embodied in the regulation is a self-supporting 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 22. 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.

x x x x x

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 Company Limited and others***[11], the Court made a distinction between effect of resignation and voluntary retirement while interpreting the General Insurance (Employees) Pension Scheme, 1995 and distinguished the decisions in ***Cecil Dennis Solomon*** (supra) and ***Sanwar Mal*** (supra) while observing thus:-

> "In these two decisions, *Sanwar Mal* (supra) and *Cecil Dennis Solomon* (supra), 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."
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> Be it noted, in the said case it has also been stated that:-
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> "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."

11 (2011) 12 SCC 197

18. In this regard, learned counsel for the respondent has placed heavy reliance on the decision in ***National Insurance Company Limited and another v. Kirpal Singh***[12] wherein the Court observed that the question that fell for determination was whether the respondents who opted for voluntary retirement from service of the appellant companies were entitled to claim pension under the General Insurance (Employees) Pension Scheme, 1995. The Court took note of the definition of the terms "retirement", "superannuation pension" and "pension on voluntary retirement" and in that context, observed:-

> "10. The only impediment in adopting that interpretation lies in the use of the word "retirement" in Para 14 of the Pension Scheme, 1995. A restricted meaning to that expression may mean that Para 14 provides only for retirements in terms of Paras (2)(*t*)(*i*) to (*iii*) which includes voluntary retirement in accordance with the provisions contained in Para 30 of the Pension Scheme. There is, however, no reason why the expression "retirement" should receive such a restricted meaning especially when the context in which that expression is being examined by us would justify a more liberal interpretation; not only because the provision for payment of pension is a beneficial provision which ought to be interpreted more liberally to favour grant rather than refusal of the benefit but also because the Voluntary Retirement Scheme itself was intended to reduce surplus manpower by encouraging, if not alluring employees to opt for retirement by offering them benefits like ex gratia payment and pension not otherwise admissible to the employees in the ordinary course. We are, therefore, inclined to hold that the expression "retirement" appearing in Para 14 of the Pension Scheme, 1995 should not

12 (2014) 5 SCC 189

only apply to cases which fall under Para 30 of the said Scheme but also to a case falling under the Special Voluntary Retirement Scheme of 2004. So interpreted, those opting for voluntary retirement under the said SVRS of 2004 would also qualify for payment of pension as they had put in the qualifying service of ten years stipulated under Para 14 of the Pension Scheme, 1995.

x x x x x

17. In the case at hand Para 2 of the Pension Scheme, 1995 (extracted earlier) defines the expressions appearing in the Scheme. But what is important is that such definitions are good only if the context also supports the meaning assigned to the expressions defined by the definition clause. The context in which the question whether pension is admissible to an employee who has opted for voluntary retirement under the 2004 Scheme assumes importance as Para 2 of the Scheme starts with the words "In this Scheme, unless the context otherwise requires". There is nothing in the context of the 1995 Scheme which would exclude its beneficial provisions from application to employees who have opted for voluntary retirement under the Special Scheme, 2004 or vice versa. The term retirement must in the context of the two schemes, and the admissibility of pension to those retiring under the SVRS of 2004, include retirement not only under Para 30 of the Pension Scheme, 1995 but also those retiring under the Special Scheme of 2004. That apart, any provision for payment of pension is beneficial in nature which ought to receive a liberal interpretation so as to serve the object underlying not only of the Pension Scheme, 1995 but also any special scheme under which employees have been given the option to seek voluntary retirement upon completion of the prescribed number of years of service and age."

19. In ***Shashikala Devi v. Central Bank of India and others***[13], the issue was whether the bank was justified in treating a letter of the

13 (2014) 16 SCC 260

employee as a letter of resignation from service. The Court referred to Regulation 29 of the Central Bank of India (Employees) Pension Regulations, 1995 and took note of the fact that the employee was entitled to take voluntary retirement and, in that context observed whether or not a given communication is a letter of resignation simpliciter or can as well be treated to be a request for voluntary retirement will always depend upon the facts and circumstances of each case and the provisions of the rules applicable. Elaborating the said facet, the Court adverted to the concept of pension and examined the true purport of the letter and came to hold that the letter was to seek voluntary retirement and not resignation from employment. The Court placed reliance on the pronouncements of ***Sudhir Chandra Sarkar v. TISCO Ltd***.[14] and ***Union of India v. Pradeep Kumari***[15].

20. Learned counsel for the respondent also placed reliance on ***Asger Ibrahim Amin v. Life Insurance Corporation of India***[16] wherein the Court was interpreting the 1995 Rules with which we are concerned in this case. In the said case, a contention was raised that the employee having resigned from service was not eligible to claim pension under the 1995 Rules. The Court referred to Rule 31 of the 1995 Rules which deals with voluntary retirement. The Court referred

14 (1984) 3 SCC 369
15 (1995) 2 SCC 736
16 (2015) 9 JT 329 : (2015) 10 SCALE 639

to the authority in ***Sheelkumar*** (supra) and thereafter referred to paragraph 10 of ***Cecil Dennis Solomon*** case (supra) which we have reproduced hereinbefore and opined thus:-

> "The legal position deducible from the above observations further amplifies that the so-called resignation tendered by the Appellant was after satisfactorily serving the period of 20 years ordinarily qualifying or enabling voluntary retirement. Furthermore, while there was no compulsion to do so, a waiver of the three months notice period was granted by the Respondent Corporation. The State being a model employer should construe the provisions of a beneficial legislation in a way that extends the benefit to its employees, instead of curtailing it."

21. It is noticeable that the two-Judge Bench distinguished the authorities in ***Shyam Babu Verma v. Union of India***[17], ***State of M.P. v. Yogendra Shrivastava***[18], ***M.R. Prabhakar v. Canara Bank***[19], ***Kirpal Singh*** (supra) and ***Sanwar Mal*** (supra) and eventually ruled thus:-

> "We thus hold that the termination of services of the Appellant, in essence, was voluntary retirement within the ambit of Rule 31 of the Pension Rules of 1995. The Appellant is entitled for pension, provided he fulfils the condition of refunding of the entire amount of the Corporation's contribution to the Provident Fund along with interest accrued thereon as provided in the Pension Rules of 1995. Considering the huge delay, not explained by proper reasons, on part of the Appellant in approaching the Court, we limit the benefits of arrears of pension payable to the Appellant to three years preceding the date of the petition filed before the High Court. These arrears of

17 (1994) 2 SCC 521
18 (2010) 12 SCC 538
19 (2012) 9 SCC 671

> pension should be paid to the Appellant in one instalment within four weeks from the date of refund of the entire amount payable by the Appellant in accordance of the Pension Rules of 1995. In the alternative, the Appellant may opt to get the amount of refund adjusted against the arrears of pension. In the latter case, if the amount of arrear is more than the amount of refund required, then the remaining amount shall be paid within two weeks from the date of such request made by the Appellant. However, if the amount of arrears is less than the amount of refund required, then the pension shall be payable on monthly basis after the date on which the amount of refund is entirely adjusted."

22. It is submitted by the learned counsel for the appellants that though the authority in ***Asger Ibrahim Amin*** (supra) deals with the 1995 Rules, it has really been guided by the concept of "beneficial legislation" and distinguished the authorities in similar situations and, therefore, the matter requires to be considered by a larger Bench. Emphasis is laid on the spinal issue that the resignation cannot be equated with voluntary retirement, unless there is a deeming provision to that effect.

23. The Court had referred to Section 3 of the 1960 Regulations which deals with "Termination" and contains Regulation 18 and Regulation 19. The relevant part of Regulation 18 reads as under:-

> "**Regulation 18. Determination of Service**:
> (1) An employee, other than an employee on probation or an employee appointed on a temporary basis, shall not leave or discontinue his service in the Corporation without first giving notice in writing to the competent authority of

his intention to leave or discontinue the service. The period of notice required shall be-

(a) three months in the case of an employee belonging to Class I

(b) one month in the case of other employees.

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

In case of breach by an employee of the provisions of the sub-regulation, he shall be liable to pay the Corporation as compensation a sum equal to his salary for the period of notice required of him, which sum may be deducted from any moneys due to him.

(2) The Chairman, the Executive Committee or the Corporation may determine the service of any permanent employee at any time on giving him-
(a) three month's notice or salary in lieu thereof if he is an employee in Class 1, and

(b) one month's notice or salary in lieu thereof if he is an employee in any other class

Provided however, that the period of notice will be doubled in the case of employees who have served for 10 years or more.

Provided further that no order under this regulation shall be made by an authority subordinate to the appointing authority

(3) Nothing contained in this regulation shall affect the right of the appointing authority to retire, discharge, remove or dismiss an employee without notice or salary in lieu thereof in accordance with the provisions of Regulation 39 or to terminate the services of any employee belonging to Class II in accordance with the provisions contained in Schedule III.

Explanations 1. The expression "month" used in this regulation shall be reckoned according to the English calendar and shall commence from the day following that on which notice is received by the Corporation or the employee as the case may be.

x x x x x"

Relevant part of Regulation 19 is to the following effect:-

"Regulation 19. Superannuation and Retirement: (1) An employee belonging to Class III or Class IV and a transferred employee belonging to Class I or Class II shall retire on completion of age 60; but the competent authority may, if it is of the opinion that it is in the interest of the Corporation to do so, direct such employee to retire on completion of 55 years of age or at any time thereafter, on giving him three months notice or salary in lieu thereof.

Provided that an employee who is a member of any approved superannuation fund as defined in clause (a) of Section 58-N of the Indian Income tax Act, 1922 and which has been recognised and allowed to be continued by the Corporation, shall be permitted upon request to retire before the date of retirement specified in this sub-regulation either (a) on completion of 25 years of service or (b) on completion of 20 years of service, provided he has reached age 50 or (c) on completion of 20 years of service if he is incapacitated for further active service.

(2) An employee belonging to Class I or Class II appointed to the service of the Corporation on or after 1st September, 1956 shall retire on completion of 60 years of age, but the competent authority may, if it is of the opinion that it is in the interest of the Corporation to do so, direct such employee to retire on completion of 50 years of age or at any time thereafter on giving him three months' notice or salary in lieu thereof.

x x x x x"

24. The relevant part of Regulation 19(2A) which was notified on 16.02.1996 reads as follows:-

> "**Regulation 19(2A).** (a) Notwithstanding what is stated in sub-rules (1) and (2) above, an employee may be permitted to retire at any time on completion of the age 55 after giving three months notice in writing to the appointing authority of his intention to retire.
>
> (b) (i) Notwithstanding the provisions of Clause (a), an employee governed by the Life Insurance Corporation of India (Employees) Pension Rules, 1995 may be permitted to retire at any time after he has completed twenty years of qualifying service, by giving notice of not less than ninety days, in writing to the appointing authority.
>
> Provided that this sub-clause shall not apply to an employee who is on deputation unless after having been transferred or having returned to India, he has resumed charge on the post in India and has served for a period of not less than one year.
>
> Provided further that this sub-clause 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.
>
> (ii) The notice of voluntary retirement given under sub-clause (i) of clause (b) 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.
>
> (iii) (A) An employee referred to in sub-clause (1) may make a request in writing to the appointing authority to

> accept notice of voluntary retirement of less than ninety days giving reasons therefor;
>
> (B) On receipt of such a request, the appointing authority may, subject to the provisions of sub-clause (ii) of clause (b), 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 such notice.
>
> x x x x x"

25. It is apposite to note here that in ***Asger Ibrahim Amin*** (supra), the two-Judge Bench has referred to the scheme of the 1995 Rules and taken note of the voluntary retirement as mentioned in the sub-rule (ii) of Rule 2(*s*). It has also referred to the relevant part of Rule 31 which we have already reproduced hereinabove and considered the question regarding interpretation of retrospective applicability of the notification in the following manner:-

> "The Respondent Corporation has vehemently argued that the termination of services is under Regulation 18 (supra) of the LIC (Staff) Regulations, 1960 and is not covered by the Pension Rules of 1995. Respondent Corporation has controverted the plea of the Appellant that at the relevant date and time, viz. 28.1.1991 there was no alternative for him except to tender his resignation, pointing out that he could not have sought voluntary retirement under Regulation 19(2A) of LIC of India (Staff) Regulations, 1960. <u>If that be so, the Respondent being a model employer could and should have extended the advantage of these Regulations to the Appellant thereby safeguarding his pension entitlement. However, we find no substance in the argument of the Respondent since Regulation 19(2A) was, in fact, notified in the Gazette of India on 16.2.1996, that is</u>

> after the pension scheme came into existence with effect from 1.11.1993. Otherwise there would have been no conceivable reason for the Appellant not to have taken advantage of this provision which would have protected his pensionary rights."
>
> [Emphasis added]

26. As we find the aforesaid analysis has been made on the basis of the principles stated in ***Sheelkumar***'s case (supra). Submission of Mr. Goburdhan, learned counsel for the appellants is that the analysis made in ***Asger Ibrahim Amin*** (supra) in respect of the 1995 Rules is not correct. It is apt to note here that 1995 Rules has been given retrospective effect on two scores, namely, the provisions will apply retrospectively with effect from the 1st day of November, 1993; and even employees who retired after the 1st day of January, 1986 and before the 1st day of November, 1993 could be entitled to exercise option to be covered under the pension scheme, subject to stipulated pre-conditions. We have already referred to Rule 3 of the 1995 Rules. As is demonstrable, the retiring employees who had been paid provident fund had to exercise their option and refund the amount paid with interest within the requisite time frame. Appreciated in this manner, it is obvious that the 1995 Rules do not postulate and do not give liberty/right to the retiring employees covered by Rule 3 to exercise option at any time. The window period and pre-conditions

were specific and mandatory. It has been noted in ***Asger Ibrahim Amin*** (supra) that there was no provision for voluntary retirement before the enforcement of the 1995 Rules. Voluntary retirement provision was introduced by the 1995 Rules under Rule 31 of the said Rules. Prior to enforcement of the aforesaid Rules, there was no concept in the Corporation which pertained to voluntary retirement. Section 2(s) of the 1995 Rules refers to voluntary retirement in accordance with the provisions contained in Rule 31 of the 1995 Rules. Rule 31 has not been given retrospective operation and effect. The retrospective operation of the 1995 Rules in entirety is limited to the employees, who had retired in normal course of superannuation. Needless to say, resignation has the effect of termination of an employee. Voluntary retirement though has the effect of termination of employee yet it has different consequences. In the former case, the ex-employee could not be entitled to pension, whereas in case of voluntary retirement, the latter one, the employee would be entitled to pension depending upon the terms postulated in the regulations or rules or the scheme. Rule 23 of the 1995 Rules specifically provides that on resignation, dismissal, removal, termination or compulsory retirement, the employee shall forfeit the entire past service and he shall not qualify for pensionary benefit. Thus, resignation given

under the 1995 Rules would not entitle an employee to get pension.

27. We may further note here that whether an employee can take voluntary retirement would depend upon the conditions of employment and the rules applicable to the scheme of voluntary retirement. When Rule 31 was not in operation, the question would arise whether the benefit can be given to an employee who had retired from service. Be it noted that the 1995 Rules are not entirely retrospective. They have limited retrospectivity. Rule 31 expressly has not been made retrospective. Retrospectivity creates a given fiction and, therefore, unless there is express provision or it can be impliedly inferred from the plain and unambiguous language used, a provision should not be given retrospectivity. To arrive at the real meaning, it is always necessary to understand the scope and object of the whole enactment or the rules. In the said context, the relevant factors are general scope and purview of the statute; remedy sought to be achieved; former state of law and what was contemplated. Unless these conditions are satisfied, it is difficult to treat Rule 31 of the 1995 Rules as retrospective, in the absence of any deemed clause that the employees who had earlier resigned shall be treated as employees as if they had voluntarily retired. In fact, if such an interpretation is placed on the said Rule, it will be travelling beyond

the language employed therein. In ***Asger Ibrahim Amin*** (supra), retrospectivity has been given to Rule 31, and for said purpose the amendment to the 1960 Regulations, specifically Regulation 19(2A) has been taken recourse to. In our view, when Rule 31 covers the field of voluntary retirement and does not make it retrospective, there being a real difference between resignation and retirement, it is not seemly to read the amended regulations to the rules to make the same retrospective. Therefore, we are unable to concur with the view expressed in ***Asger Ibrahim Amin*** (supra).

28. In view of the aforesaid analysis, let the matter be placed before Hon'ble Chief Justice of India for constitution of a larger Bench. Till the matter is decided, the Life Insurance Corporation, the appellant herein, shall go on paying fifty per cent of the pensionary amount to the respondent, commencing from 1st December, 2015.

.....J.
(Dipak Misra)

.....J.
(Prafulla C. Pant)

New Delhi;
November 26, 2015.

ITEM NO.3 COURT NO.5 SECTION XV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No.24108/2012

(Arising out of impugned final judgment and order dated 16/08/2011 in DBCSA No. 172/2008,16/08/2011 in SBCWP No.6026/1997 passed by the High Court of Rajasthan at Jaipur)

SR. DIVNL. MANAGER L.I.C & ORS. Petitioner(s)

VERSUS

SHREE LAL MEENA Respondent(s)

(With interim relief and office report)

Date : 26/11/2015 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s) Mr. D. N. Goburdhan, AOR
Mr. Lal Ratimaman, Adv.
Mr. Abhishek Aggarwal, Adv.

For Respondent(s)
Mr. Ansar Ahmad Chaudhary, AOR

UPON hearing the counsel the Court made the following

O R D E R

Let the matter be placed before Hon'ble Chief Justice of India for constitution of a larger Bench, in terms of the signed reportable order.

Till the matter is decided, the Life Insurance Corporation, the appellant herein, shall go on paying fifty per cent of the pensionary amount to the respondent, commencing from 1st December, 2015.

(Chetan Kumar) (H.S. Parasher)
Court Master Court Master

(Signed reportable order is placed on the file)