SUPREME COURT OF INDIA

Asger Ibrahim Amin

Vs.

Life Insurance Corporation of India

C.A.No.10251 of 2014

(Vikramajit Sen and Abhay Manohar Sapre,JJ.,)

12.10.2015

JUDGMENT

Vikramajit Sen,J.,

1. The question which falls for consideration is whether the Appellant is entitled to claim pension even though he resigned from service of his own volition and, if so, whether his claim on this count had become barred by limitation or laches.

2. The Appellant joined the services of the Respondent Corporation on 30.6.1967 on the post of Assistant Administrative Officer (Chartered Accountant) at the age of twenty seven. He worked for 23 years and 7 months in the Corporation before tendering his resignation on 28.1.1991, owing to "family circumstances and indifferent health", presumably having crossed fifty years in age. The request of the Appellant for waiver of the stipulated three months notice was favourably considered by the Corporation vide letter dated 28.2.1991, and the Appellant was allowed to resign from the post of Deputy General Manager (Accounts), which he was holding at that time. We shall again presume that the reasons that he had ascribed for his retirement, viz. family problems and failing health, were found to be legitimate by the Respondent, otherwise the waiver ought not to have been given. Thereafter, the Central Government in exercise of power conferred under Section 48 of the Life Insurance Corporation Act, 1956 had notified the LIC of India (Staff) Regulations, 1960 and thereafter the Life Insurance Corporation of India (Employees) Pension Rules, 1995 (hereinafter referred to as "Pension Rules") which, though notified on 28.6.1995, were given retrospective effect from 1.11.1993. The Pension Rules provide, inter alia, that resignation from service would lead to forfeiture of the benefits of the entire service including eligibility for pension.

3. On 8.8.1995, that is post the promulgation by the Respondent of the Pension Rules, the Appellant enquired from the Respondent whether he was entitled to pension under the Pension Rules, which has been understood by the Respondent as a representation for pension; the Respondent replied that the request of the Appellant cannot be acceded to. The Appellant took the matter no further but has averred that in 2000, prompted by news in a

Daily and Judgments of a High Court and a Tribunal, he requested the Respondent to reconsider his case for pension. This request has remained unanswered. It was in 2011 that he sent a legal notice to the Respondent, in response to which the Respondent reiterated its stand that the Appellant, having resigned from service, was not eligible to claim pension under the Pension Rules. Eventually, the Appellant filed a Special Civil Application on 29.3.2012 before the High Court, which was dismissed by the Single Judge vide Judgment dated 5.10.2012. The LPA of the Appellant also got dismissed on the grounds of the delay of almost 14 years, as also on merits vide Judgment dated 1.3.2013, against which the Appellant has approached this Court.

4. As regards the issue of delay in matters pertaining to claims of pension, it has already been opined by this Court in Union of India v. Tarsem Singh, (2008) 8 SCC 648 that in cases of continuing or successive wrongs, delay and laches or limitation will not thwart the claim so long as the claim, if allowed, does not have any adverse repercussions on the settled third-party rights. This Court held:

> 7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.
>
> (emphasis is ours)

We respectfully concur with these observations which if extrapolated or applied to the factual matrix of the present case would have the effect of restricting the claim for pension, if otherwise sustainable in law, to three years previous to when it was raised in a judicial forum. Such claims recur month to month and would not stand extinguished on the application of the laws of prescription, merely because the legal remedy pertaining to the time barred part of it has become unavailable. This is too well entrenched in our jurisprudence, foreclosing any fresh consideration.

5. The second issue which confronts us is whether the termination of service of the Appellant remains unalterably in the nature of resignation, with the consequence of disentitling him from availing of or migrating/mutating the pension scheme or whether it instead be viewed as a voluntary retirement or whether it requires to be regarded so in order to bestow this benefit on the Appellant; who had 'resigned' after reaching the age of fifty and after serving the LIC for over twenty three years. The Appellant resigned from service under Regulation 18 of LIC of India (Staff) Regulations, 1960, which along with the other provisions of relevance is reproduced for facility of reference –

SECTION 3 - TERMINATION Determination of Service.

> "18. (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.
> Superannuation and Retirement: 19(1) xx
>
> (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. The following Regulations, on which learned Senior Counsel for the LIC has placed reliance, came to be introduced on 16.2.1996, that is after the Appellant had 'resigned' from service. We have called for and perused this Notification, and as we expected, these provisions apply retrospectively with effect from 1.11.1993. These Regulations ordain, inter alia, that an employee may be permitted to retire (a) on completion of the age of 55 and (b) after completing 25 years in service. In other words, the Corporation has the power to compulsory retire an employee who has attained the age of 50 years if in its opinion such decision is in the interests of the Corporation; and the employee may seek permission to retire upon completion of 55 years of age and after rendering 25 years of service. This very position finds reiteration in Rule 31 of the Pension Rules under the epithet 'voluntary retirement', which pandect appears to have been available from the inception i.e. 1.11.1993.

(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."

6 . As we have already recounted, the Appellant received a waiver of the requirement of giving three months prior notice of his resolve to "discontinue his service in the Corporation", bestowing legitimacy to the reasons that compelled him to do so. It also brings to the fore that the 1960 Staff Regulations did not provide for voluntary retirement or VRS as has become commonplace today. This Court has clarified and highlighted that 'resignation' and 'retirement' have disparate connotations; that an employee can 'resign' at any time but, in contradistinction, can 'retire' only on completion of the prescribed period of qualifying service and in consonance with extant Rules and Regulations.

7. We shall now consider the Pension Rules of 1995. Rule 3 of Chapter II thereof, provides that the Rules are applicable to employees (1) who were in the service of the Corporation on or after 1.1.1986 and had retired before 1.11. 1993 i.e. the notified date, or (2) who retired after 1.11.1993; or (3)who were in the service before the notified date and continued to be in service on or after the notified date; or (4) who were in the service on or after 1.1.1986 but had retired on or after 1.11.1993 and before the notified date. What is discernible from these dates is that the Pension Rules of 1995 have included two classes of beneficiaries into one homogenous class, to wit, the employees who had retired before the notified date and those who were to retire after the notified date. In our opinion, the advantage of these beneficent Rules should be extended even to the Appellant who was similarly placed as the retirees mentioned in Rule 3 but for the fact that he had 'resigned' rather than retired. The two provisions caught in the crossfire are Rule 2(s), which defines "retirement" and Rule 23, which deals with the "forfeiture of service":

"2(s) " retirement" means,- (i) retirement in accordance with the provisions contained in sub-regulation (1) or sub-regulation (2) or sub-regulation (3) of regulation 19 of the Life Insurance Corporation of India (Staff) Regulations, 1960 and rule 14 of the Life Insurance Corporation of India Class III and Class IV Employees (Revision of Terms and Conditions of Service) Rules, 1985 made under the Act;

(ii) voluntary retirement in accordance with the provisions contained in rule 31 of these rules. (emphasis added)

23. Forfeiture of service - Resignation or dismissal or removal or termination or compulsory retirement of an employee from the service of the Corporation shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. Voluntary retirement, noted in the sub-Rule (ii) of Rule 2(s), has been defined in Rule 31, and it reads as follows:

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. It seems obvious to us that the Appellant's case does not fall within the postulation of Rule 23 as the last four categories or genres or types of cessation of services are in character punitive; and the first envisages those resignations where the right to pension has not been earned by that time or where it is without the permission of the Corporation."

8. 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. 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 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.

9. We also record that the provisions covered by the definition of "retirement", which do not entail forfeiture of service, are sub-regulation (1), sub-regulation (2), and sub-regulation (3) of Regulation 19 of the Life Insurance Corporation of India (Staff) Regulations, 1960 and Rule 14 of the Life Insurance Corporation of India Class III and Class IV Employees (Revision of Terms and Conditions of Service) Rules, 1985. None of these provisions provides for voluntary retirement like Rule 31 of the Pension Rules nor does the definition of "retirement" make any mention of aforementioned Regulation 19(2A).

10. The facts of the case disclose that the Appellant has worked for over twenty years and had tendered his resignation in accordance with the provision of Regulation 18 of LIC of India (Staff) Regulations, 1960, which, as is apparent from its reading, does not dissimulate

between the termination of service by way of resignation on the one hand and voluntary retirement on the other, or distinguish one from the other. Significantly, there was no provision for voluntary retirement at the relevant time, and it was for this reason that the Pension Rules of 1995 specifically provided for it under Rule 31. In this backdrop of facts, we need not dwell much on the issue because the case of *Sheelkumar Jain v. New India Assurance Co. Ltd.*[1], is on all fours of this case.

11. In Sheelkumar, the Appellant resigned from the services of the Respondent Company after serving for over 20 years on 16.12.1991. His resignation was offered and granted under Clause 5 of General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976. Thereafter, the Central Government formulated General Insurance (Employees') Pension Scheme, 1995 with retrospective effect from 1.11.1993. Sheelkumar applied for pension under this Scheme, which was declined on the ground that resignation from service would entail forfeiture of service under Clause 22 of the General Insurance (Employees') Pension Scheme, 1995. The Appellant moved the High Court challenging the rejection of his claim. His writ petition as well as the writ appeal was dismissed by the High Court. The Appellant then moved this Court, whereby we noted that Clause 5 of the Scheme of 1976 did not mention resignation nor was the Appellant made aware of the distinction between resignation and voluntary retirement; that this distinction was a product of the General Insurance (Employees') Pension Scheme of 1995. This Court observed:

> "20. Sub-para (1) of Para 5 does not state that the termination of service pursuant to the notice given by an officer or a person of the Development Staff to leave or discontinue his service amounts to "resignation" nor does it state that such termination of service of an officer or a person of the Development Staff on his serving notice in writing to leave or discontinue in service amounts to "voluntary retirement". Sub-para (1) of Para 5 does not also make a distinction between "resignation" and "voluntary retirement" and it only provides that an employee who wants to leave or discontinue his service has to serve a notice of three months to the appointing authority.
>
> 21. We also notice that sub-para (1) of Para 5 does not require that the appointing authority must accept the request of an officer or a person of the Development Staff to leave or discontinue hisservice but in the facts of the present case, the request of the appellant to relieve him from his service after three months' notice was accepted by the competent authority and such acceptance was conveyed by the letter dated 28-10-1991 of the Assistant Administrative Officer, Indore. Xxxxx
>
> 23. The 1995 Pension Scheme was framed and notified only in 1995 and yet the 1995 Pension Scheme was made applicable also to employees who had left the services of Respondent 1 Company before 1995. Paras 22 and 30 of the 1995 Pension Scheme quoted above were not in existence when the appellant submitted his letter dated 16-9-1991 to the General Manager of Respondent 1 Company. Hence, when the appellant served his letter dated 16-9-1991 to the General Manager of Respondent 1

Company, he had no knowledge of the difference between "resignation" under Para 22 and "voluntary retirement" under Para 30 of the 1995 Pension Scheme. Similarly, Respondent 1 Company employer had no knowledge of the difference between "resignation" and "voluntary retirement" under Paras 22 and 30 of the 1995 Pension Scheme, respectively.

24. Both the appellant and Respondent 1 have acted in accordance with the provisions of sub-para (1) of Para 5 of the 1976 Scheme at the time of termination of service of the appellant in the year 1991. It is in this background that we have now to decide whether the termination of service of the appellant under sub-para (1) of Para 5 of the 1976 Scheme amounts to resignation in terms of Para 22 of the 1995 Pension Scheme or amounts to voluntary retirement in terms of Para 30 of the 1995 Pension Scheme.

25. Para 22 of the 1995 Pension Scheme states that the resignation of an employee from the service of the corporation or a company shall entail forfeiture of his entire past service and consequently he shall not qualify for pensionary benefits, but does not define the term "resignation". Under sub-para (1) of Para 30 of the 1995 Pension Scheme, an employee, who has completed 20 years of qualifying service, may by giving notice of not less than 90 days in writing to the appointing authority retire from service and under sub-para (2) of Para 30 of the 1995 Pension Scheme, the notice of voluntary retirement shall require acceptance by the appointing authority. Since "voluntary retirement" unlike "resignation" does not entail forfeiture of past services and instead qualifies for pension, an employee to whom Para 30 of the 1995 Pension Scheme applies cannot be said to have "resigned" from service.

26. In the facts of the present case, we find that the appellant had completed 20 years of qualifying service and had given notice of not less than 90 days in writing to the appointing authority of his intention to leave the service and the appointing authority had accepted notice of the appellant and relieved him from service. Hence, Para 30 of the 1995 Pension Scheme applied to the appellant even though in his letter dated 16-9-1991 to the General Manager of Respondent 1 Company he had used the word "resign".

12 What is unmistakably evident in the case at hand is that the Appellant had worked continuously for over 20 years, that he sought to discontinue his services and requested waiver of three months notice in writing, and that the said notice was accepted by the Respondent Corporation and the Appellant was thereby allowed to discontinue his services. If one would examine Rule 31 of the Pension Rules juxtaposed with the aforementioned facts, it would at once be obvious and perceptible that the essential components of that Rule stand substantially fulfilled in the present case. In Sheelkumar, this Court was alive to the factum that each case calls for scrutiny on its own merits, but that such scrutiny should not be detached from the purpose and objective of the concerned statute. It thus observed:

> "30. The aforesaid authorities would show that the court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement and while construing the statutory provisions, the court will have to keep in mind the purposes of the statutory provisions.
>
> 31.The general purpose of the 1995 Pension Scheme, read as a whole, is to grant pensionary benefits to employees, who had rendered service in the insurance companies and had retired after putting in the qualifying service in the insurance companies. Paras 22 and 30 of the 1995 Pension Scheme cannot be so construed so as to deprive of an employee of an insurance company, such as the appellant, who had put in the qualifying service for pension and who had voluntarily given up his service after serving 90 days' notice in accordance with sub-para (1) of Para 5 of the 1976 Scheme and after his notice was accepted by the appointing authority."

13. The Appellant ought not to be deprived of pension benefits merely because he styled his termination of services as "resignation" or because there was no provision to retire voluntarily at that time. The commendable objective of the Pension Rule is to extend benefits to a class of people to tide over the crisis and vicissitudes of old age, and if there are some inconsistencies between the statutory provisions and the avowed objective of the statute so as to discriminate between the beneficiaries within the class, the end of justice obligates us to palliate the differences between the two and reconcile them as far as possible. We would be failing in our duty, if we go by the letter and not by the laudatory spirit of statutory provisions and the fundamental rights guaranteed under Article 14 of the Constitution of India.

14. *Reserve Bank of India v. Cecil Dennis Solomon*[2], relied upon by the Respondent, although distinguishable on facts, has ventured to distinguish "voluntary retirement" from "resignation" in the following terms:

> 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*[3] 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*[4] 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.
>
> (emphasis is ours)

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.

15. The cases of *Shyam Babu Verma v. Union of India*[5], *State of M.P. v. Yogendra Shrivastava*[6], *M.R. Prabhakar v. Canara Bank*[7], *National Insurance Co. Ltd. v. Kirpal Singh*[8], *UCO Bank v. Sanwar Mal*[9]relied upon by the parties are distinguishable on facts from the present case.

16. 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 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.

17 The impugned Judgments of the High Court are set aside and the Appeal stands allowed in the terms above. However, parties shall bear their respective costs.

Judgment Referred.

[1]*(2011) 12 SCC 0197*

[2]*(2004) 9 SCC 0461*
[3]*(1989) Supp (2) SCC 0175*
[4]*(1978) 2 SCC 0301*
[5]*(1994) 2 SCC 0521*
[6]*(2010) 12 SCC 0538*
[7]*(2012) 9 SCC 0671*
[8]*(2014) 5 SCC 0189*
[9]*(2004) 4 SCC 0412*