

# **Sheelkumar Jain vs New India Assurance Co. Ltd. & Ors on 28 July, 2011**

**Equivalent citations: AIR 2011 SUPREME COURT 2990, 2011 AIR SCW 4517, 2011 LAB. I. C. 3631, 2011 (4) AIR JHAR R 790, (2011) 131 FACLR 307, 2011 (12) SCC 197, (2011) 5 ALLMR 380 (SC), (2011) 5 LAB LN 483, (2011) 1 SCT 34, (2011) 8 SCALE 96, (2012) 1 SERVLJ 211, (2013) 1 ALL WC 100, (2011) 3 CURLR 19, (2011) 4 PAT LJR 182, (2012) 1 SERVLR 305**

**Author: A. K. Patnaik**

**Bench: A. K. Patnaik, R. V. Raveendran**

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6013 OF 2011

(Arising out S.L.P. (C) NO. 3777 OF 2007)

Sheelkumar Jain

..... Appellant

Versus

The New India Assurance Co. Ltd. & Ors.

..... Respondents

J U D G M E N T

A. K. PATNAIK, J.

Leave granted.

2. This is an appeal by way of special leave against the order dated 10.11.2006 of the Division Bench of the Madhya Pradesh High Court, Indore Bench, in W.A. No.224 of 2006.

3. The brief facts of this case are that on 01.07.1969 the appellant was appointed as an Inspector in Liberty Insurance Company Limited. Under the General Insurance Business (Nationalised) Act, 1972 (for short 'the Act'), Liberty Insurance Company was nationalized and merged in the respondent no.1-Company. The services of the appellant were absorbed in respondent No.1-Company and in September, 1984, he was promoted as Assistant Administrative Officer and posted at the Guna Branch as Assistant Branch Manager. In the year 1989, he was transferred to Indore and posted as Assistant Administrative Officer and thereafter as Divisional Accountant and in 1991 he was promoted to the post of Administrative Officer. The appellant then served a letter dated 16.09.1991 to the General Manager of respondent No.1- Company at the Head Office of the company at Bombay saying that he would like to resign from his post and requesting him to treat the letter as three months' notice and to relieve him from his services. The Assistant Administrative Officer, Indore, by his letter dated 28.10.1991 informed the appellant that his resignation has been accepted by the competent authority with effect from 16.12.1991, i.e. after completion of three months notice. Accordingly, the appellant was relieved from his services on 16.12.1991. Thereafter, the General Insurance (Employees') Pension Scheme, 1995 (for short 'the Pension Scheme, 1995') was made by the Central Government in exercise of its powers under Section 17-A of the Act. The Pension Scheme, 1995 applied also to employees who were in the service of respondent No.1-Company on or after first January, 1986 but had retired before the first day of November, 1993 and exercised an option in writing within 120 days from the notified date provided he refunded within the specified period the entire amount of the company's contribution to the provident fund including interest thereon as well as the entire amount of non-refundable withdrawal, if any, made from the company's contribution to the provident fund amount and interest thereon. On 20.10.1995, the appellant submitted an application to the respondent No.1- Company opting for the Pension Scheme, 1995 and gave an undertaking to refund to respondent No.1-Company the entire amount of company's contribution to his provident fund account together with interest as well as the entire amount of non-refundable withdrawal, if any, made by him from company's contribution to his provident fund account and interest thereon. The respondent No.1-Company, however, intimated the appellant by letter dated 25.10.1995 that the Pension Scheme, 1995 was not applicable to those who have resigned from the respondent No.1-Company and since the appellant has resigned, he will not be entitled for the Pensions Scheme, 1995.

4. The appellant then filed Writ Petition No.692 of 1996 before the Madhya Pradesh High Court, Indore Bench, which was dismissed by the learned Single Judge by order dated 15.02.2000. Aggrieved, the appellant initially filed Special Leave Petition before this Court, but thereafter withdrew the same and challenged the order of the learned Single Judge before the Division Bench of the Madhya Pradesh High Court in Writ Appeal No.224 of 2006. The Division Bench of the Madhya Pradesh High Court held in the impugned order that under Clause 22 of the Pension Scheme, 1995, resignation entails forfeiture of the past services and as the appellant has resigned from service, even if he had worked for 20 years in respondent No.1-Company, he cannot be equated with an employee who had taken voluntary retirement from service under Clause 30 of the Pension Scheme, 1995 and the Pension Scheme, 1995 did not apply to the appellant and dismissed the Writ

Appeal.

5. Mr. Sushil Kumar Jain, learned counsel for the appellant, submitted that the High Court was not right in coming to the conclusion that the appellant had resigned from service. He submitted that though in the letter dated 16.09.1991 to the General Manager of the respondent no.1- Company the appellant used the word 'resigned', the letter was actually a three months' notice for voluntary retirement. He submitted that the appellant had rendered 20 years service and 20 years service was the qualifying service for voluntary retirement under Clause 30 of the Pension Scheme, 1995. He submitted that since the appellant had rendered more than 20 years of service under the respondent no.1-Company, he was entitled to the pension and such pension should not be denied to him by saying that he had resigned from service and had not taken voluntary retirement. He further submitted that Clause 22 of the Pension Scheme, 1995 providing that resignation from the service of the respondent no.1-Company shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits, was not in existence when the appellant submitted his letter dated 16.09.1991 and the only provision that was in force was Clause 5 of the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976, (for short 'the Scheme 1976') which provided that an officer or a person of the Development Staff shall not leave or discontinue his service without first giving a three months notice in writing to the appointing authority of his intention to leave or discontinue the service. He submitted that had there been a provision similar to Clause 22 of the Pension Scheme, 1995 in the Scheme, 1976, he would not have used the word 'resigned' in his letter dated 19.06.1991.

He cited the decisions of this Court in *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd. & Ors.* [AIR 1984 SC 1064], *J.K. Cotton Spinning and Weaving Mills Company Ltd. v. State of U. P. & Ors.* [(1990) 4 SCC 27], *Union of India & Ors. v. Lt. Col.*

*P.S. Bhargava* [(1997) 2 SCC 28] and *Sansar Chand Atri v.*

*State of Punjab & Anr.* [(2002) 4 SCC 154] to contend that the resignation of the appellant actually amounted to voluntary retirement in the facts and circumstances of the case. He vehemently argued that it has been held in *D.S. Nakara & Ors.*

*v. Union of India* [(1983) 1 SCC 305] and *Chairman, Railway Board & Ors. v. C. R. Rangadhamaiah & Ors.* [AIR 1997 SC 3828] that pension is neither a bounty nor a matter of grace but is a payment for the past services rendered by an employee. He relied on the decisions of this Court in *S. Appukuttan v. Thundiyil Janaki Amma & Anr.* [(1988) 2 SCC 372], *Vatan Mal v. Kailash Nath* [(1989) 3 SCC 79], *Employees' State Insurance Corporation v. R.K. Swamy & Ors.* [(1994) 1 SCC 445] and *Union of India & Anr. v. Pradeep Kumari & Ors.*

[(1995) 2 SCC 736] for the proposition that while interpreting a statute the Court must have regard to the legislative intent and should not take a narrow or restricted view which will defeat the beneficial purpose of the statute.

6. Mr. Balaji Subramanian, learned counsel for the respondents, on the other hand, submitted that the letter dated 16.09.1991 of the appellant to the General Manager of the respondent no.1-Company used the word 'resigned' and, therefore, the appellant actually resigned from service and did not take voluntary retirement. He cited a decision of this Court in UCO Bank & Ors., etc. v. Sanwar Mal, etc. [(2004) 4 SCC 412] in which this Court, while construing the UCO Bank (Employees') Pension Regulations, 1995 which had similar provisions, held that the words 'resignation' and 'voluntary retirement' carry different meanings and an employee, who has resigned from the service, was not entitled to pension. He also relied on the decision of this Court in Reserve Bank of India & Anr. v. Cecil Dennis Solomon & Anr. [(2004) 9 SCC 461] in which this Court, while construing the provisions of the Reserve Bank of India Pension Regulations, 1990, has held that in service jurisprudence, the expressions "resignation"

and "voluntary retirement" convey different connotations and a person who has resigned is not entitled to pension.

7. We have perused the decisions of this Court cited by learned counsel for the respondents. In Reserve Bank of India & Anr. v. Cecil Dennis Solomon & Anr. (supra) employees of the Reserve Bank of India had tendered their resignations in 1988 and were getting superannuation benefits under the provident fund contributory provisions and gratuity schemes.

Subsequently, the Reserve Bank of India Pension Regulations, 1990 were framed. The employees who had tendered resignations in 1988 claimed that they were entitled to pension under these new Pension Regulations and moved the Bombay High Court for relief and the High Court held that the Reserve Bank of India was legally bound to grant pension to such employees. The Reserve Bank of India challenged the decision of the Bombay High Court before this Court and this Court held that as the employees had tendered resignation which was different from voluntary retirement, they were not entitled to pension under the Pension Regulations. Similarly, in UCO Bank & Ors., etc. v. Sanwar Mal, etc. (supra) Sanwar Mal, who was initially appointed in the UCO Bank on 29.12.1959 and was thereafter promoted to Class III post in 1980, resigned from the service of the UCO Bank after giving one month's notice on 25.02.1988. Thereafter, the UCO Bank (Employees') Pension Regulations, 1995 were framed and Sanwar Mal opted for the pension scheme under these regulations. The UCO Bank declined to accept his option to admit him into the pension scheme. Sanwar Mal filed a suit for a declaration that he was entitled to pension under the Pension Regulations and for a mandatory injunction directing the UCO Bank to make payment of arrears of pensions along with interest. The suit was decreed and the decree was affirmed in first appeal and thereafter by the High Court in second appeal. The UCO Bank carried an appeal to this Court and this Court differentiated "resignation" from "voluntary retirement" and allowed the appeal and set aside the judgment of the High Court. In these two decisions, 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.

8. For deciding this issue, we have to look at the Clause 5 of the Scheme, 1976 made under Section 10 of the Act under which the services of the appellant were terminated after he submitted his letter

dated 16.09.1991 to the General Manager of respondent No.1- Company saying that he would like to resign from his post and requesting him to treat the letter as three months' notice and to relieve him from his services.

Clause 5 of the Scheme, 1976 is quoted hereinbelow:

"5. Determination of Service:

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

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

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

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

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

It will be clear from the language of sub-clause (1) of Clause 5 of the Scheme, 1976 that an officer or a person of the Development Staff could leave or discontinue his services after giving in writing to the appointing authority of his intention to leave or discontinue of the services and the period of such notice required to be given was three months. It is in accordance with this statutory provision that the appellant submitted his letter dated 16.09.1991 to the General Manager of respondent No.1-Company saying that he would like to resign from his post and requesting him to treat the letter as three months' notice and to relieve him from his services and it is in accordance with this statutory provision that the competent authority accepted his resignation with effect from 16.12.1991, i.e. after completion of three months' notice. Sub-

clause (1) of Clause 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-clause (1) of Clause 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. We also notice that sub-clause (1) of Clause 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 his service 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.

9. We may now look at Clauses 22 and 30 of the Pension Scheme, 1995 which are quoted hereinbelow:

"22. Forfeiture of Service: Resignation or dismissal or removal or termination or compulsory retirement or an employee from the service of the Corporation or a Company shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.

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

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

Provided further that this sub-paragraph shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement. (2) The notice of voluntary retirement given under sub-paragraph (1) shall require acceptance by the appointing authority:

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

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

(b) on receipt of request under clause (a), the appointing authority may, subject to the provisions of sub-paragraph (2), consider such request for the curtailment of the period of notice of ninety days on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing

authority may relax the requirement of notice of ninety days on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of ninety days.

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

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

(5) The qualifying service of an employee retiring voluntarily under this paragraph shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty three years and it does not take him beyond the date of retirement. (6) The pension of an employee retiring under this paragraph shall be based on the average emoluments as defined under clause (d) of paragraph 2 of this scheme and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension;

Explanation: For the purpose of this paragraph, the appointing authority shall be the appointing authority specified in Appendix-I to this scheme."

10. The Pension Scheme, 1995 was framed and notified only in 1995 and yet the Pension Scheme, 1995 was made applicable also to employees who had left the services of the respondent No.1-Company before 1995. Clauses 22 and 30 of the Pension Scheme, 1995 quoted above were not in existence when the appellant submitted his letter dated 16.09.1991 to the General Manager of respondent No.1-Company. Hence, when the appellant served his letter dated 16.09.1991 to the General Manager of respondent No.1- Company, he had no knowledge of the difference between 'resignation' under Clause 22 and 'voluntary retirement' under Clause 30 of the Pension Scheme, 1995. Similarly, the respondent No.1-Company employer had no knowledge of the difference between 'resignation' and 'voluntary retirement' under Clauses 22 and 30 of the Pension Scheme, 1995 respectively. Both the appellant and the respondent No.1 have acted in accordance with the provisions of sub-clause (1) of Clause 5 of the Scheme, 1976 at the time of determination of service of the appellant in the year 1991. It is in this background that we have now to decide whether the determination of service of the appellant under sub-clause (1) of Clause 5 of the Scheme, 1976 amounts to resignation in terms of Clause 22 of the Pension Scheme, 1995 or amounts to voluntary retirement in terms of Clause 30 of the Pension Scheme, 1995. Clause 22 of the Pension Scheme, 1995 states that resignation of an employee from the service of the Corporation or a Company shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits, but does not define the term "resignation". Under sub-clause (1) of Clause 30 of the Pension Scheme, 1995, 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-clause (2) of Clause 30 of the Pension Scheme, 1995, 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 Clause 30 of the Pension Scheme, 1995 applies cannot be said to have 'resigned' from service. In the facts of the present case, we find that the appellant had completed 20 years qualifying service and had given notice of not less than 90 days in writing to the appointing authority of his intention to leave service and the appointing authority had accepted notice of the appellant and relieved him from service.

Hence, Clause 30 of the Pension Scheme, 1995 applied to the appellant even though in his letter dated 16.09.1991 to the General Manager of respondent no.1-Company he had used the word 'resign'.

11. We may now cite the authorities in support of our aforesaid conclusion. In *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd. & Ors.* (supra), the plaintiff had rendered continuous service under the respondent from 31.12.1929 till 31.08.1959, i.e. for 20 years and 8 months. He submitted a letter of resignation dated 27.07.1959 and his resignation was accepted by the respondent by letter dated 26.08.1959 and he was released from his service with effect from 01.09.1959. On these facts, a three-Judge Bench of this Court held:

"The termination of service was thus on account of resignation of the plaintiff being accepted by the respondent. The plaintiff has, within the meaning of the expression, thus retired from service of the respondent and he is qualified for payment of gratuity in terms of Rule 6."

12. In *Union of India & Ors. v. Lt. Col. P.S. Bhargava* (supra), respondent joined the Army Dental Corps in 1960 and thereafter he served in various capacities as a specialist and on 02.01.1984 he wrote a letter requesting for permission to resign from service with effect from 30.04.1984 or from an early date. His resignation was accepted by a communication dated 24.07.1984 and he was released from service and he was also informed that he shall not be entitled to gratuity, pension, leave pending resignation and travel concession. On receipt of this letter, he wrote another letter dated 18.08.1984 stating that he was not interested in leaving the service. This was followed by another letter dated 22.08.1984 praying to the authority to cancel the permission to resign. These letters were written by the respondent because he realized that he would be deprived of his pension, gratuity, etc. as a consequence of his resignation. These subsequent letters dated 18.08.1984 and 22.08.1984 were not accepted and the respondent was struck off from the rolls of the Army on 24.08.1984. On these facts, the Court held:

"Once an officer has to his credit the minimum period of qualifying service, he earns a right to get pension and as the Regulations stand that right to get pension can be taken only if an order is passed under Regulations 3 or 16."

13. 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. The general purpose of the Pension Scheme, 1995, 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. Clauses 22 and 30 of the Pension Scheme, 1995 cannot be so construed as to deprive of an employee of an Insurance Company, such as the appellant, who had put in the qualifying service for pension and who had voluntarily given up his service after serving 90 days notice in accordance with sub-clause (1) of Clause 5 of the Scheme, 1976 and after his notice was accepted by the appointing authority.

14. In the result, we set aside the orders of the Division Bench of the High Court in the Writ Appeal as well as the learned Single Judge and allow this appeal as well as the Writ Petition filed by the appellant and direct the respondents to consider the claim of the appellant for pension in accordance with the Pension Scheme, 1995 and intimate the decision to the appellant within three months from today. There shall be no order as to costs.

.....J. (R. V. Raveendran) .....J. (A. K. Patnaik) New Delhi, July 28, 2011.