

considerable light on the subject and of far reaching importance. The golden thread of rule passing through this decision is subsequently followed, reaffirmed and reiterates in AIR 1997 SC 1751, AIR 1968 SC 1355, 1996 AIHC 4746 AP (DB) and other decisions which are extracted to focus the matter under the article.

Effect of Waiver, Estopped or abandonment

AIR 1965 SC 1405

If abandonment or waiver is established no question of discretion on the part of the Court would arise to consider the alternative relief.

AIR 1997 SC 1751 @ 1756 (Para 12)

If abandonment or waiver is established no question of discretion on the part of the Court would arise to consider the alternative relief

AIR 1996 AIHC 4746 AP DB Para 7:

It is obvious the question of waiver or abandonment is a question of fact, which has to be inferred from the circumstance of the particular case. As succinctly laid down by Justice *Subbarao* (as he then was), speaking for the bench in *Satyanarayana v. Yellaji Rao*, AIR 1965 SC 1405, delay is one thing and abandonment and waiver is another, the former is relevant for the purpose of

exercising discretion of the Court in granting specific performance, while in the case of later if abandonment or waiver is proved no question of discretion arises and the plaint must fail automatically.

The study of mine would be incomplete if I do not advert to the other decision of the Supreme Court AIR 1968 SC 1355 to the effect alternative relief of Specific Performance of a Contract cannot be granted in a suit for the main relief of rescission.

On a careful consideration of the above decided cases as stated supra, what emerges is that in a suit for Specific Performance, if the claim for the main relief of Specific Performance is abandoned or waived or the contract is rescinded, the Plaintiff is not entitled for the alternative relief of refund of purchase money or damages. There appears to be no considerable divergence of judicial authority on the subject under study. This note may be concluded with an expression of regret that this bed rock of law is not followed at several levels which may amount to judicial impropriety. (Please See 1997 (2) CCC 297). It needs no special emphasis to state so long as life cases, so long shall be the duty and endeavour of the course to give provisions of the constitution and other laws they come across, a true meaning which prevent human suffering and degradation.

*Any unsophisticated contra view is worth welcome*

## RETIRAL BENEFITS: A STUDY IN THE LIGHT OF PEPSU ROAD TRANSPORT CORPORATION CASE<sup>1</sup>

By

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1. In Pepsu Road Transport Corporation Case<sup>3</sup>, the Supreme Court has elaborately

1. AIR 2011 SC P.1974

2. Dean & Principal, Bharati Vidyapeeth Deemed University New Law College, Pune

3. Supra

emphasized the reasons for granting pension to the employees. They may be stated thus:-

- i. Pension is a retirement benefit partaking of the character of regular payment to the employees in consideration of the past services rendered.

- ii. Pension is not a bounty but is claimable as matter of right – a valuable right vested in a Government servant<sup>4</sup>. However, the right is not absolute or unconditional. The person claiming the right must establish his entitlement to such pension in law<sup>5</sup> or regulations framed under the statute.
- iii. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules<sup>6</sup>. In other words, the entitlement to pension depends on the provisions and interpretation of rules and regulations.
- iv. Pension is payable periodically as long as the pensioner is alive. Pension is therefore, a term “applied to periodic money payment to a person who retires at a certain age considered as an age of disability. Payments gradually continue to the rest of the natural life of the recipient<sup>7</sup>.
- v. In the case of an employee governed by pension scheme, his relationship with the employer merely undergoes a change and do not snap altogether<sup>8</sup>.
- vi. Stating that the scheme of pension, vary from country to country and scheme to scheme summarized as follows:
  - (a) As compensation to former members of the armed forces or their dependants for old age, disability or death. They are based on service causes. This has been termed as of ‘Great Antiquity’.
  - (b) As old age retirement or disability benefits for civilian employees. This
- is in force in several Countries over a century; and
- (c) As social security payment for the aged, disabled or deceased citizens made in accordance with rules governing social service programmes of the country.
- vii. The other views<sup>9</sup>, such as pension is a charity, paternalism payment, reward for service rendered and as a means of promoting general welfare, have become otiose.
- viii. As observed by the U.S. Supreme Court<sup>10</sup>, pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient to meet the expenses of living. Our Apex Court<sup>11</sup> considered this as the ‘nearest approach’ and it should ensure freedom from underserved want. The Apex Court further observed that pension is a measure of ‘socio-economic justice’, which inheres economic security in the full of life and most practical *raison d’être* for pension is the inability to provide for one self due to old age;
- ix. Pension is the fulfillment of a Constitutional promise inasmuch as it partakes the character of public assistance in cases of unemployment, old age, disablement or similar other cases of underserved want. The rules and regulations framed makes effective this Constitutional promise<sup>12</sup>;
- x. Pension is treated as a deferred salary and it is akin to ‘right to property’ and has nexus with the salary payable as on the date of retirement<sup>13</sup>.

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4. *Deokureinden Prasad v. State of Bihar*, AIR 1971 SC P.1409

5. *Prabhu Narain v. State of U.P.*, (2004)13 SCC P.662

6. *State of Punjab v. Iqbal Singh*, AIR 1976 SC 667

7. *D.S. Nakara v. Union of India*, AIR 1983 SC P.130

8. *All India Reserve Bank Retired Officers Association v. Union of India*, AIR 1992 SC P.767

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9. *Encyclopaedia Britannica* Vol. 17 P.575.

10. *Donge v. Board of Education*, 302 US P.74

11. *Supra* Para 28

12. *Supra* Para 29

13. *American Jurisprudence* 2nd Vol. 60 at Page 879

- xi. Pension is mainly designed to assist the pensioner in providing for his daily wants, and it pre-supposes the continual life of the recipient<sup>14</sup>; and
- xii. Pension is a right attached to the office and cannot arbitrarily be deprived<sup>15</sup>.

2. The Apex Court also considered the contributory provident fund, which has replaced the pension scheme and observed as follows:

- i. Taking into consideration various difficulties, financial and administrative, the most appropriate course appears to be the institution compulsorily of 'contributory provident scheme' in which both the worker and employer would contribute and also cultivating among the workers a spirit of saving something regularly<sup>16</sup>.
- ii. CPF scheme is a substitute for old age pension and in the prevailing conditions in India, the institution of a pension scheme could not be visualized in the near future and it was not the intention of Parliament that PF benefit envisaged by the said Act<sup>17</sup>; would be in addition to pensionary benefit<sup>18</sup>.
- iii. In *Krishan Kumar v. Union of India*<sup>19</sup>, the Apex Court stated:

- (a) The employees registered under the Provident Fund Act shall be entitled to claim all benefits available under CPF scheme framed under the Act *i.e.*, Employees Provident Fund (Miscellaneous Provisions) Act, 1952;

- (b) CPF scheme requires opening of the account for the employee by the employer;
- (c) The Government/employer is under the continuous obligations to deposit equal or matching contribution made by the employee in his account till he retires;
- (d) Once the employee is retired, then his rights *qua* Government/employer contribution with his CPF account finally crystallizes;
- (e) After retirement, the entire CPF account is paid to the employee as a retiral benefit;
- (f) On the receipt of CPF amount, the relationship between the employer and employee ceases to exist without leaving any further legal rights or obligations *qua*-each other; and
- (g) CPF scheme has the object of providing social security to the employee or his family.

3. The CPF scheme which has replaced the pension scheme cannot provide that amount of social security which the later provides. The important reason could be that CPF scheme provides an one time payment when the employee retires. In many cases, employees have to fulfil many obligations during the post retirement period such as perform the marriages of their children and meet their educational needs and in addition to meet expenditure on family maintenance and take care of sick and aged parents. This is an actual reality in many cases of late marriages or who beget children in their advanced ages. The entire amount received towards PF is spent and there will be nothing remaining for the survival of the employee during the rest of his post retiral life.

4. Further, during the service period, the saving may be either 'nil' or negligible as

14. Corpus Juris Secundum Vol.7 at P.423.

15. A.P. Srivastava v. Union of India

16. Committee for protection of rights of ONGC Employee v. ONGC (Oil Gas Commission); AIR 1990 SC P.1167

17. Employees Provident Fund (Miscellaneous Provision) Act, 1992

18. Pepsu Case Supra Para 23

19. AIR 1990 SC P 1783

most of the salary is spent on the maintenance of family, education of children, purchase of house on loan basis, payments of loan installment or many items of daily necessity, expenditure incurred on aged parent, rising cost of essential articles which is sometimes beyond the capacity of the employee to bear with; and

5. It is therefore, suggested that the CPF scheme be converted into a pension scheme with least liability to employer either governmental or private.

The suggestion may be stated as follows:-

1. The CPF amount collected together with employer's contribution every year may be pooled and deposited for a period equal to the service period of the employee. For example: if the employee enters service at the age of 30 years, (assuming the age of retirement is fixed at 60 years) the deposit will be for 29 years.

2. Similar deposits will be made each year for example in the second year the deposit will be for 28 years and so on.

3. These deposits made each year will almost multiply by three or four times *i.e.*, if the deposit in the first year is Rs.6000/- for 30 years, it would become Rs.1,80,000/- on the date of retirement. Similarly other deposit made each year can be further determined and net income from the deposits as on the date of his retirement will be several lakhs of rupees – may be 30 to 40 lakhs.

4. Each year as small fraction of the amount collected, say 1/16th part, may be kept as available fund for the employee to meet certain essential needs and the rest as non drawable.

5. At the time of retirement of entire sum standing to his credit may be deposited with a specially created bank which will pay

interest regularly every month *i.e.*, it will be almost equal to basic pay drawn at the time of his retirement. This may be a periodical monthly payment by the bank out of the interest earned. In the event of his death, the amount may be paid to the family member upto the last surviving member and later the amount may be transferred to the eState of the deceased for distribution to various legal heirs as per succession law applicable.

6. There is a need to create a specialized statutory corporation named as 'Indian Pension Regulatory and Payment Corporation' which will have enough power to regulate all matters relating to the deposits.

7. A special bank may be created as 'Employees PF – cum Pension Development and Regulation Bank' which will accept the entire amount transferred under the fund and pay interest every month to the retired employee concerned.

8. In the event of death of an employee during his service, the amount standing to the credit of the deceased employee during his service, the amount standing to the credit of the deceased employee may be paid to the family with option to deposit in the bank of to receive the monthly payments.

9. In the event of resignation the amount may be transferred to the new employer following the same procedure of yearly deposits.

It is hoped that this scheme will have the same effect as that of pension scheme with no liability to employer to pay monthly periodic pension. This has to be mandatorily followed by all employer and employees in the private employment sector as well. This will also put an end to persisting demand of employees for the revival of pension scheme. As a precautionary measure, the entire fund may be compulsorily insured.