

(2015) 06 GUJ CK 0007

In the Gujarat High Court

Case No : Special Civil Application No. 958 of 2014

Barot Rameshchandra Babulal

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227, 32

Citation : (2015) 06 GUJ CK 0007

Hon'ble Judges : J.B. Pardiwala, J

Bench : Single Bench

Advocate : Devang J. Joshi, for the Appellant

Final Decision : Disposed off

Judgement

J.B. Pardiwala, J.—By this writ-application under Article 226 of the Constitution of India, the petitioner, a former employee of the State Government, has prayed for the following reliefs:--

"(a) To direct the respondent authorities to forthwith give pensionary benefits to the petitioner from the date of his resignation, with applicable interest

(b) Pending the admission, hearing and final disposal of this petition, be pleased to direct the respondent authorities to continue to pay the pensionary benefits to the petitioner;

(c) To grant any other appropriate and just relief/s."

2. The facts of the case may be summarized as under:--

3. The petitioner was appointed on 28th January, 1966 on the post of the Agricultural Inspector. On account of a serious ailment of his wife and other social circumstances, he had to resign from the service on 26th June, 1976.

4. It is his case that he served with the department of the State Government for more than 10 years and thus became entitled to get the pensionary benefits. He

preferred an application dated 9th August, 1977 and claimed pension. The authority rejected the claim of the petitioner for pension on the ground that he had voluntarily tendered his resignation, and the employee who resigns from service is not entitled for the pension. It is his case that vide letter dated 7th October 1989, he was informed by the Agricultural Director that according to the rules and regulations of the State Government, an employee who puts in 10 years" qualifying service is entitled to pension but, in all those cases where resignations are offered, then such employees are not entitled to pension.

5. It is his case that he kept knocking the doors of the State Government for his right to receive pension but of no avail and, ultimately, the issue was taken up by the permanent Lok Adalat, by way of an alternative dispute resolution. The case of the petitioner was taken up by the permanent Lok Adalat conducted by the High Court of Gujarat, on 31st July 2013, and on that day the Lok Adalat disposed of the matter by passing the following order.

"MEDIATORS: HON"BLE MR. JUSTICE C.V. JANI(Retd.)and Mr. M.M. PARIKH, DIRECTOR, PENSION and P.F.(Retd.)

The reply filed by Director of Agriculture Vadodara dated 30th July, 2013 rejecting the claim of the applicant for pensionary benefits is assailed by the applicant by relying on the judgment of the Karnataka High Court, ILR 20003 Karnataka 2605 wherein it was laid down that where a employee is putting more than minimum qualifying service for pension under the relevant regulations or the rules, in case of resignation after putting in the qualifying service the employee is entitled to pension. The rules mentioned in the judgment of the Gujarat High Court in Special C.A. No. 24250 of 2000 are Rules of GSCR. In any case this case arises delicate question of law which can be resolved by the High Court and the applicant"s claim for beneficiary benefits depends upon the resolution of this dispute. Hence the matter is required to be disposed of and it cannot be resolved by conciliation between the parties. The applicant if he so chooses may approach a competent forum for appropriate remedy.

Petition is disposed of."

6. The petitioner is a senior citizen aged 72 years and has averred in the writ-application that he is leaving below the poverty line.

7. On 24th January 2014, a notice was issued to the respondents and pursuant to the same, the respondent No. 2 has appeared and filed an affidavit-in-reply. The following averments are made in the affidavit-in-reply.

"6. it is respectfully submitted that the petition is as such required to be rejected at the outset only on the ground of delay. It would be pertinent to note that the petitioner had served with the department from the year 1966 to 1976 thereafter, the petitioner had resigned from service and the petitioner after delay of 38 years has approached this Hon"ble Court and prayed for the pensionary benefits on the basis of his service which were rendered in the year 1976 that

too, the petitioner resigned from the service.

7. it is respectfully submitted that the petitioner has also contended that the service of the petitioner shall be governed by Bombay Civil Services Rules. It would be pertinent to quote Rule 250(A) for the kind perusal of this Hon"ble Court which pertains to resignation of Government Service and the consequences.

"250. (a) The following constitute an interruption of Service:--

1) Resignation of Government Service.

2) Removal from Government Service.

3) Absence from duty otherwise than on authorized leave, unless the absence follows immediated upon authorized leave and no other Government servant is appointed substantively to the post on which the absentee holds alien, or on suspension immediately followed by reinstatement.

(b) unless Government in any case otherwise, direct an interruption of service shall entail cancellation of all duty counting for pension."

8. It is respectfully submitted that from the above it is clear that the petitioner is not entitled to the benefits as prayed for by the petitioner more particularly, when the rules are very clear to the effect that in case of resignation employee is not entitled the pensionary benefits.

9. In view of the above facts and circumstances the petitioner is not entitled to any relief"s as prayed for him in the petition and the same may be dismissed in the interest of justice."

8. Mr. Devang J. Joshi, the learned advocate appearing for the petitioners, submitted that the case of his client is covered by the erstwhile Bombay Civil Services Rules and not the Gujarat Civil Services Rules. He submitted that the legitimate claim of the petitioner has been rejected without any legal basis for the same.

9. On the other hand, this application has been vehemently opposed by the learned AGP appearing for the respondents. He submitted that it is not in dispute that the petitioner had put in 10 years of qualifying service but had tendered resignation. According to the learned AGP, the petitioner, having resigned from the service, is not entitled to pension. In support of his submissions he has placed reliance on two decisions of this Court.

(i) Jitendra Shantilal Shukla Vs. Bank of Baroda and Another, (2005) 3 LLJ 305 ;

(ii) Chandrikaben R. Patel V. State of Gujarat, Letters Patent Appeal No. 198/2007, decided on 8th February, 2008.

10. The learned AGP appearing for the State raised a temporary objection as regards the maintainability of this petition on the ground of inordinate delay and laches on the part of the petitioner in invoking the equitable jurisdiction of this

Court under Article 226 of the Constitution of India. According to the learned AGP, the petitioner had resigned way back in the year 1976. The petitioner has approached this Court almost after a period of 38 years. Thus, according to the learned AGP, this petition need not be adjudicated on merits and the same be rejected only on the ground of delay.

11. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is, whether the petitioner is entitled to receive pension.

12. Since the learned AGP has raised a preliminary contention as regards the maintainability of this writ-application on the ground of delay, I should consider the same first.

13. In the context of the submission of delay, I may quote with profit a decision of the Supreme Court in the case of Shiv Dass Vs. Union of India (UOI) and Others, AIR 2007 SC 1330 : (2007) 2 LLJ 212 : (2007) 2 SCALE 325 : (2007) 9 SCC 274 : (2007) 2 SCC(L&S) 395 : (2007) 2 SCR 1127 : (2007) AIRSCW 1487 : (2007) AIRSCW 6274 : (2007) 1 Supreme 455 , in which the Supreme Court made the following observations in paragraphs Nos. 6, 7, 8, 9, 10 and 11:--

"6. Normally, in the case of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India, 1950 (in short the "Constitution"). In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad Vs. Chief Controller of Imports and Exports, AIR 1970 SC 769 : (1969) 1 SCC 185 : (1969) 2 SCR 861 . Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Company v. Prosper Armstrong Hurd etc., (1874) 5 P.C. 221 at page 239 was approved by this Court in The Moon Mills, Ltd. Vs. M.R. Meher, President, Industrial Court, Bombay and Others, AIR 1967 SC 1450 and Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, AIR 1969 SC 329 : (1969) 1 SCR 808 , Sir Barnes had stated:

"Now the doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, if

founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

8. It was stated in *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, AIR 1987 SC 251 : (1986) 2 SCALE 638 : (1986) 4 SCC 566 : (1987) 1 SCR 1 , that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

9. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in *K.V. Rajalakshmiah Setty and Another Vs. State of Mysore and Another*, AIR 1967 SC 993 : (1967) 2 LLJ 434 : (1967) 2 SCR 70 . There is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In *State of Orissa Vs. Pyarimohan Samantaray and Others*, AIR 1976 SC 2617 : (1977) 43 CLT 595 : (1977) 34 FLR 300 : (1976) LabIC 1697 : (1977) 3 SCC 396 : (1976) 8 UJ 967 making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See *State of Orissa and Others Vs. Shri Arun Kumar Patnaik and Others*, AIR 1976 SC 1639 : (1976) LabIC 1122 : (1976) 3 SCC 579 : (1976) SCR 59 Supp : (1976) 8 UJ 508 also).

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.

11. In the peculiar circumstances, we remit the matter to the High Court to hear the writ petition on merits. If it is found that the claim for disability pension is sustainable in law, then it would mould the relief but in no event grant any relief for a period exceeding three years from the date of presentation of the writ petition. We make it clear that we have not expressed any opinion on the merits as to whether appellant's claim for disability pension is maintainable or not. If it is sans merit, the High Court naturally would dismiss the writ petition."

14. At the very outset, I would like to mention that the State, being a model employer and the protector of the civil rights of its citizens, should not raise the point of limitation to deprive its own citizens of their legitimate claim. Reference in this regard may be made to the decision of the Hon"ble Supreme Court in the case of S.R. Bhanrale Vs. Union of India and others, (1996) 6 AD 195 : AIR 1997 SC 27 : (1996) LabIC 2576 : (1996) 5 SCALE 693 : (1996) 10 SCC 172 : (1996) 3 SCR 763 Supp : (1997) 1 SLJ 14 : (1996) AIRSCW 4176 : (1996) 6 Supreme 258 . Despite Limitation Act has no application in the writ petition, writ may be issued either for the enforcement of ordinary legal right of the person whose legal right has been violated or for enforcement of the fundamental rights guaranteed under Part III of the Constitution.

15. One cannot be unmindful about the fine distinction between violation of one's ordinary legal right and infringement of one's fundamental right guaranteed under Part III of the Constitution. When a person comes to a Court under Article 226 of the Constitution of India alleging violation of his ordinary legal right, the Court may refuse to grant relief to a party if he does not approach the Court with all promptitiveness. However, if a fundamental right of a citizen is infringed, can the High Court refuse to enforce fundamental right guaranteed to a citizen only on the ground of delay.

16. The Hon"ble Supreme Court in the case of Tridip Kumar Dingal and Others Vs. State of West Bengal and Others, (2008) 12 JT 587 : (2009) 1 SCC 768 : (2009) 2 SCC(L&S) 119 : (2009) 2 SLJ 196 : (2009) 3 SLR 1 , held as follows:

"Paragraph 56- We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Article 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ Court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 of 226 of the Constitution is that the petitioner is guilty of delay and laches.

Paragraph 57- The petitioner wants to invoke jurisdiction of a writ Court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of the principle is not to encourage agitation of stale claims and exhumate matters which

have already been disposed of or settled or where the rights of third party have accrued in the meantime (vide *State of M.P. v. Bhailal Bhai, Moon Mills Ltd. V. Industrial Court and Bhoop Singh v. Union of India*). This principle applies even in case of an infringement of fundamental right (vide *Tilokch and Motichand v. H.B. Munshi, Durga Prashad v. Chief Controller of Export and Imports and Rabindranath Bose v. Union of India*).

Paragraph 58 - There is no upper limit and there is no lower limit as to when a person can approach a Court. The question is one of discretion and has to be decided on the basis of facts before the Court depending on and varying from case to case. It will depend upon what breach of fundamental right and the remedy claimed are and when and how the delay arose. Paragraph 59-We are in respectful agreement with the following observations of this Court in *P.S. Sadasivaswamy v. State of T.N.*

2. it is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a certain length of time. But it would be sound and wise exercise of discretion for the Courts to refuse exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters."

17. The aforesaid decisions of the Hon"ble Supreme Court, thus, make it clear that inordinate delay in approaching the Court by a citizen even for enforcement of fundamental right, may cause fatal to the entertainment of the writ petition by the High Court, particularly when the citizen wants to agitate a stale claim and exhume matters which had already been disposed of or settled or where the right of third party had intervened in the meantime.

18. In the facts of the instant case, it cannot be said that because of the delay in approaching this Court, a third party interest has been created and such third party interest may be affected if relief as prayed for herein is granted by this Court in favour of the petitioner, in exercise of its extraordinary jurisdiction. As such, this writ petition cannot be rejected on that score.

19. In view of the above, the preliminary objection as regards the delay is overruled.

20. The principal argument of the learned AGP on merit is that the petitioner had resigned from service. It would constitute an interruption of service. If there is an interruption of service, then notwithstanding the fact that the petitioner had put in 10 years of qualifying service, he would not be entitled to pension. The Learned AGP has relied on Rule 250(A) of the Bombay Civil Service Rules.

21. I deem it necessary to look into Rule 250, which reads as under:--

"Rule 250 : Rule 250

(a) The following constitute an interruption of service:-(1) Resignation of Government service. (2) Removal from Government Service.(3) Absence from duty otherwise than on authorised leave unless the absence follows immediately upon authorised leave and no other Government servant is appointed substantively to the post on which the absentee holds a lien. or on suspension immediately followed by reinstatement.

(b) Unless Government in any case otherwise, direct an interruption of service shall entail cancellation of all duty counting for pension.

Exception. - Orders condoning interruption in service are not necessary for the grant of pension in the case of (i) a Government servant who is removed from service and (ii) a Government servant who dies while under suspension or is removed/retired or is permitted to retire at the end of suspension.

Note 1.-Upon such conditions as is may think fit in each case to impose, the authority competent to fill the appointment held by a Government servant at the time condonation is applied for, where he to vacate that appointment, may condone all interruptions in his service rendered under this Government including an interruption between Government servant's non-pensionable service and his subsequent pensionable service in order to make the former service pensionable under clause (1) or (2) of Bombay Civil Services Rule 240 or under Bombay Civil Services Rule 240-A as the case may be. See in this connection Explanation 2 below Rule 43 in Appendix XIV-C.

Note 2.-Usually condonations of interruptions should not be allowed under the above not unless there are sound reasons for doing so for instance whether the Government servant had good reasons for resigning his appointment in the first instance, or if he was compelled by reason beyond his control (for example through illness) to quit service before due time and it is therefore, considered fit to permit him to count certain past pensionable service for pension.

Note 3.-Heads of Departments may condone not more than three interruptions of total period not exceeding three months in all in each case in respect of non-Gazetted Government servant under their control.

Note 4.-The provision of this rule shall not apply to a Government servant retiring on or after 1st April, 1966 and to whom the Revised Pension Rules, 1950 are applicable, provided that the Government servant who is reappointed to Government service after resignation of his own accord or after removal from shall not count for pension or Death-cum-Retirement Gratuity unless specific entries are made in his book."

22. In the present case, it appears that the concerned authority has not applied its mind to the provisions of note-4 to Rule 250 and rejected the claim of the petitioner on the basis of the fact that resignation from service tantamount to interruption of service.

23. It is not in dispute that the petitioner completed 10 years of his qualifying

service in 1976 and, thereafter, tendered his resignation. Rule 250 of the B.C.S.R. are not applicable in the case of the petitioner. Rule 250 of the B.C.S.R. would not apply to a government servant retiring on or after 1st April 1966 and to whom the Revised Pension Rules, 1950 were applicable.

24. Let me now look into the two decisions relied upon by the learned AGP. In the case of Jitendra Shantilal (*supra*), the Division Bench made the following observations in paragraph No. 5:--

"5. In our opinion, the question whether resignation in akin to voluntary retirement is no longer *res integra* and must be treated as settled against the Appellant by the judgments of the Supreme Court in *UCO Bank and Others Vs. Sanwar Mal*, AIR 2004 SC 2135 : (2004) 3 CTC 301 : (2004) 101 FLR 437 : (2004) 2 LLJ 490 : (2004) 4 SCALE 280 : (2004) 4 SCC 412 : (2004) SCC(L&S) 699 : (2004) 3 SCR 1125 : (2005) 1 SLJ 1 : (2004) AIRSCW 2294 : (2004) 3 Supreme 184 , *Jaipal Singh Vs. Smt. Sumitra Mahajan and Another*, AIR 2004 SC 2066 : (2004) 4 JT 542 : (2004) 4 SCALE 129 : (2004) 4 SCC 522 : (2004) 3 SCR 683 : (2004) AIRSCW 2010 : (2004) 3 Supreme 3 and *Reserve Bank of India and Another Vs. Cecil Dennis Solomon and Another*, (2003) 10 JT 156 : (2004) 1 LLJ 782 : (2003) 10 SCALE 44 : (2004) 9 SCC 461 : (2004) SCC(L&S) 737 : (2003) 6 SCR 465 Supp : (2004) 2 SLJ 129 : (2004) 1 UJ 608 . In *Sanwar Mal*'s case (*supra*), the Supreme Court interpreted the provisions of *UCO Bank (Employees)" Pension Regulations, 1995*, which are *pari materia* to the regulations framed by the Respondent-Bank. While allowing the appeal filed by the Bank against the order of the Punjab and Haryana High Court, which had upheld the Respondents' claim for pension by treating resignation at par with voluntary retirement, the Supreme Court observed as under 2004-II-LLJ-490 at p.496:

"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 pension Scheme herein is based on adequate contributions from the members of the pension fund and requires the Bank, on actuarial calculations, to make annual contribution to the fund. 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 purpose 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-?-vis voluntary retirement and acceptance thereof....Hence we do not find any merit in the arguments advanced on behalf of the respondent...."

25. In the case of Chandrikaben R. Patel (supra), the Division Bench made the following observations in paragraph Nos. 6, 7 and 8:--

"6. In the matter of Chandulal M. Machhi (supra), the appellant was the employee of a Non-Government grant-in-aid High School. He resigned from service on 13th June, 1971. Thereafter, in December, 1971 the State Government introduced pension scheme for the employees of the Non-Government grant-in-aid Schools. The said pension scheme was made applicable to all who retired from service on 1st April, 1969 or thereafter. That appellant raised demand for pension in the month of November, 1991 which came to be rejected by the State Government as the appellant had resigned from service and had not retired from service. While allowing his claim, the Court observed that, expression retirement has variety of shades and interpretation of the department in treating the quitting of service by the original petitioner as resigned and not retired, does not go hand-in-gloves with the pension policy and the principles of Welfare State, to which the State had avowed and the same have been highlighted in the Government Resolution. In the matter of Udaykumar Bhatt (supra), the learned Single Judge has relied upon the judgment of the Hon"ble Supreme Court in the matter of J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others, AIR 1990 SC 1808 : (1991) 61 FLR 329 : (1990) 3 JT 300 : (1991) 1 LLJ 39 : (1990) 2 SCALE 153 : (1990) 4 SCC 27 : (1990) 3 SCR 523 : (1990) 3 SLJ 105 : (1990) 2 UJ 438 ; judgment of the Delhi High Court in the matter of Mr. Ashwani Kumar Sharma Vs. Oriental Bank of Commerce, (2003) 2 LLJ 575 : (2003) 3 SLJ 405 wherein the learned Judge has observed that, Resignation and voluntary retirement stand on slightly different footing but the effect and substance thereof is not of much significance.

7. We are of the opinion that the above referred judgment in the matter of Rasubha Nitubha Jhala has no applicability on the facts of the present case. In that case the learned Judge has held that the petitioner was ignorant and that when he applied for "voluntary resignation", he, in fact, had applied for "voluntary retirement". That is not the case in the present matter. The appellant was conscious of the distinction between retirement and resignation and of her rights also. When her application for voluntary retirement was not accepted, she could have challenged the said action. Instead, she opted to get out of the service by tendering resignation and by paying one month's salary in lieu of notice. The judgment in the matter of Udaykumar Thakorbbhai Bhatt (supra) is evidently per-incuriam. The learned Judge had not noticed the binding judgments of the Division Bench of this court in the matter of Premji Khanji Masani Vs. United India Insurance Co. and Others, (1999) 3 GLR 2604 and in the matter of

H.M. Thakker V. Sr. Divisional Manager the [Letters Patent Appeal No. 574 of 1997 decided on 5 November, 1998 (Coram: MR. JUSTICE C.K. THAKKER, as he then was and MR. JUSTICE A.L. DAVE)] and the earlier judgment of one of us (R.M. Doshit, J.) in the matter of Lucious S. Christian Vs. Union of India and Others, (2001) 1 GLR 668 . In the aforesaid matters, the question was whether the resignation submitted by the concerned employee amounted to retirement entitling the concerned employee to pensionary benefits. Considering the judgment of the Hon"ble Supreme Court in the matter of J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others, AIR 1990 SC 1808 : (1991) 61 FLR 329 : (1990) 3 JT 300 : (1991) 1 LLJ 39 : (1990) 2 SCALE 153 : (1990) 4 SCC 27 : (1990) 3 SCR 523 : (1990) 3 SLJ 105 : (1990) 2 UJ 438 and the other judgments of the Hon"ble Supreme and this Court, the Bench has held the other way that, in order to constitute voluntary retirement from service, giving of notice of not less than ninety days in writing by an employee to the appointing authority and acceptance of the same by the appointing authority, are essential ingredients. More over, an employee who has elected to retire voluntarily and has given necessary notice to the effect to the appointing authority is precluded from withdrawing his notice, except with the specific approval of the authority. The qualifying service of an employee retiring voluntarily stands increased by a period not exceeding five years. All these elements are not present in a case where an employee resigns from service..... Under the circumstances, resignation of an employee cannot be equated with his voluntary retirement from service. In Letters Patent Appeal No. 574 of 1997, it has been held that, But it cannot be gainsaid there is distinction between voluntary retirement and resignation. The judgment in the matter of C.M. Machhi (supra) is ex-facie contrary to the above referred Hon"ble Supreme Court judgment. The law laid down in the said judgment is not a good law.

8. We are of the opinion that the appellant had indeed resigned from service with full knowledge of its consequence. In view of these binding judgments of the Division Bench of this Court, and the judgment of the Hon"ble Supreme Court in UCO Bank and Others Vs. Sanwar Mal, AIR 2004 SC 2135 : (2004) 3 CTC 301 : (2004) 101 FLR 437 : (2004) 2 LLJ 490 : (2004) 4 SCALE 280 : (2004) 4 SCC 412 : (2004) SCC(L&S) 699 : (2004) 3 SCR 1125 : (2005) 1 SLJ 1 : (2004) AIRSCW 2294 : (2004) 3 Supreme 184 we are inclined to hold that by resigning from service, the appellant forfeited her right to pension. The learned Single Judge has rightly rejected the appellant's claim for pensionary benefit."

26. What is discernible from the two decisions noted above is that, resignation brings about complete cessation of the master and servant's relationship whereas, fortiori, the retirement maintains relationship for the purpose of grant of retiral benefits, in view of the past service.

27. The correct approach of the respondents should have been to consider the case of the petitioner keeping in mind the position of law prevailing in the year 1977 so far as grant of pension is concerned without making rule 250 of the

BCSR applicable. To put in other words, what would have been the position if rule 250 was not applicable and the petitioner after putting in qualifying service of 10 years resigns from service.

28. I am of the view that the respondents should consider the entire claim of the petitioner after giving him an opportunity of hearing, more particularly, in light of Rule 250 of the B.C.S.R. referred to and discussed above. The respondents shall also look into the two decisions of this Court referred to and relied upon by the learned AGP. The respondents shall reconsider the claim of the petitioner and take a fresh decision in the matter within a period of four weeks from the date on which the writ of this order is received by the respondent. The respondents are expected to pass a reasoned order and communicate the same to the petitioner.

29. The writ-application is accordingly disposed of in above terms.