

(2015) 05 AHC CK 0107

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 31696 of 2000

B.P. Rajpoot

APPELLANT

Vs

Assistant General Manager, Oriental Insurance Co. Ltd. and
Others

RESPONDENT

Date of Decision : 29-05-2015

Acts Referred:

General Insurance Business (Nationalisation) Act, 1972 — Section 17-A

Citation : (2015) 7 ADJ 700 : (2016) 2 ALJ 36 : (2015) 4 AWC 3941 : (2015) 4
ESC 2294 : (2015) 3 UPLBEC 1958

Hon'ble Judges : M.C. Tripathi, J

Bench : Single Bench

Advocate : R.K. Nigam and M.R. Gupta, for the Appellant; Manish Goyal and
Akansha Sharma, Advocates for the Respondent

Final Decision : Allowed

Judgement

M.C. Tripathi, J—Heard Shri M.R. Gupta, learned Counsel for the petitioner and Ms. Akansha Sharma, holding brief of Shri Manish, Goyal for the respondents. By means of present writ petition, the petitioner has prayed for quashing the letter dated 5.5.2000 (Annexure No. 2 to the writ petition) and termination notice dated 19.5.2000 (Annexure No. 3 to the writ petition). He has further prayed for direction in the nature of mandamus commanding the respondents to release retiral benefits along with interest in his favour.

2. Brief facts giving rise to the present writ petition are that the petitioner was initially appointed as Inspector/Development Officer in Oriental Insurance Company Ltd., Jhansi on 8.11.1979. He had completed his qualifying service of twenty years and sought his voluntary retirement through his notice dated 12.1.2000. After three months, the period of notice expired on 12.4.2000 and on the said date, the petitioner stood voluntarily retired ipso-facto. By the impugned order dated 5.5.2000, served on the petitioner on 4.7.2000, the respondent No. 2 rejected the petitioner's application for voluntary retirement and the

respondent No. 1 issued the impugned notice of termination on 19.5.2000, which was served on the petitioner on 4.7.2000. The petitioner moved a representation dated 14.7.2000 to the respondents for payment of regular pension and entire retiral dues including GPF, Gratuity, GIS etc.

3. A supplementary affidavit was filed on 9.7.2001, annexing therewith a notification issued by the Department of Economic Affairs (Insurance Division), Ministry of Finance, Government of India dated 28.6.1995, which was issued in exercise of the powers conferred by Section 17-A of the General Insurance Business (Nationalisation) Act, 1972. Para 30 (1) and (2) of Classes of Pension in Chapter-V of the Scheme is reproduced:--

"(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 in 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"

4. Learned Counsel for the petitioner submits that the petitioner had already completed the period of qualifying service of twenty years and is fully entitled to seek his voluntary retirement. He had tendered voluntary retirement notice on 12.1.2000 and three months" period expired on 12.4.2000 and accordingly the relationship of master and servant had ceased. No disciplinary proceeding was either pending or contemplated against the petitioner at the time of tendering voluntary retirement notice and in the impugned notice also, there was no imputation or any charge against him except the allegation that the petitioner was running short of the target fixed by the company. The impugned termination notice has been issued after expiry of the statutory period of three months. The petitioner apprised to the respondents vide letter dated 5.7.2000 that the voluntary retirement notice does not require any approval or sanction. He submits that the impugned termination notice is without jurisdiction as no

relationship of master and servant remains after expiry of three months" notice of voluntary retirement and the petitioner is entitled to get his retiral benefits.

5. Learned Counsel for the petitioner further submits that it is admitted fact that for voluntary retirement notice, the mandatory period is 90 days and during this period the respondents did not give any refusal for the said voluntary retirement notice and therefore, the petitioner stood retired on 90th day after expiry of the said notice. There is an express provision in the Statutes for seeking the retirement earlier than the expiry of 90 days period. The reasons for seeking the earlier retirement than expiry of 90 days were the family circumstances. The respondents deliberately allowed 90 days" period to be expired on 12.4.2000. Therefore, by operation of law, the voluntary retirement notice had become effective and the petitioner is deemed to have retired on expiry of 90 days" period. There is no other provision in the Statutes, which may disentitle the petitioner from seeking voluntary retirement notice after the period of 90 days in the event of salary for the subsequent period having been drawn by him. The respondents have taken a plea that the petitioner had drawn the salary beyond the period of 90 days" upto June, 2000, therefore, he has abandoned his voluntary retirement notice. This plea cannot be sustained in the eye of law as at no point of time the petitioner had withdrawn his voluntary retirement notice. The petitioner's voluntary retirement notice is governed by the provisions of Notification of Government of India, Ministry of Finance (Department of Economic Affairs - Insurance Division) enforced from 28.6.1995. The notice was given on 12.1.2000 on which date the above notification was already enforced and therefore, it cannot be said that the petitioner's service conditions (voluntary retirement) shall be governed by the notification dated 29.4.1976. The notification dated 29.4.1976 did not hold the field at the time when the petitioner gave notice for voluntary retirement and specifically Gazette notification was already enforced with effect from 28.6.1995 repelling to the earlier provisions. The respondents are trying to create confusion by referring the so called notification dated 29.4.1976, which was not applicable. As a matter of fact, the petitioner's case is covered under the deeming clause of Statute i.e. after expiry of 90 days period of the voluntary retirement notice. The petitioner stood retired on expiry of 90 days and if at all he had drawn the salary, the same can be realised from his dues and the petitioner is ready to refund the above amount of salary beyond 90 days even at this stage. There is no provision for abandonment of voluntary retirement notice on the ground that the person seeking retirement had drawn salary beyond 90 days. The respondents are seeking to get advantage of their own lapse i.e. passing of the salary for the months of April, May and June, 2000.

6. Learned Counsel for the petitioner has placed reliance on a judgment in State of Haryana and Others Vs. S.K. Singhal, AIR 1999 SC 1829 : (1999) 82 FLR 476 : (1999) 3 JT 140 : (1999) 2 SCALE 650 : (1999) 4 SCC 293 : (1999) 2 SCR 714 : (1999) 2 UJ 944 : (1999) AIRSCW 1427 : (1999) 4 Supreme 205 , in which Hon"ble Supreme Court held that the voluntary retirement notice will

automatically be deemed to be accepted on expiry of notice period and any action (whether termination or otherwise) thereafter shall be absolutely illegal and void. Relevant paragraphs 9, 10, 11, 12 and 13 of the judgment are reproduced hereinafter:--

"9. The employment of government servants is governed by rules. These rules provide a particular age as the age of superannuation. Nonetheless, the rules confer a right on the Govt. to compulsorily retire an employee before the age of superannuation provided the employee has reached a particular age or has completed a particular number of years of qualifying service in case it is found that his service has not been found to be satisfactory. The rules also provide that an employee who has completed the said number of years in his age or who has completed the prescribed number of years of qualifying service could give notice of (say) three months that he would voluntarily retire on the expiry of the said period of three months. Some Rules are couched in language which results in an automatic retirement of the employee upon expiry of the period specified in the employee's notice. On the other hand, certain Rules in some other departments are couched in language which makes it clear that even upon expiry of the period specified in the notice, the retirement is not automatic and an express order granting permission is required and has to be communicated. The relationship of master and servant in the latter type of rules continues after the period specified in the notice till such acceptance is communicated; refusal of permission could also be communicated after 3 months and the employee continues to be in service. Cases like *B.J. Shelat Vs. State of Gujarat and Others*, AIR 1978 SC 1109(1) : AIR 1978 SC 1109 : (1978) 37 FLR 156 : (1978) 2 LLJ 34(1) : (1978) 2 SCC 202 : (1978) 3 SCR 553 : (1978) 10 UJ 303 ; and *Union of India and others Vs. Sayed Muzaffar Mir*, AIR 1995 SC 176 : (1994) 6 JT 288 : (1995) 1 LLJ 157 : (1994) 4 SCALE 258 : (1995) 1 SCC 76 Supp : (1994) 3 SCR 729 Supp , belong to the former category where it is held that upon expiry of the period, the voluntary retirement takes effect automatically as no order of refusal is passed within the notice period. On the other hand *Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Ltd. Vs. Suman Behari Sharma*, (1996) 3 AD 617 : AIR 1996 SC 1353 : (1996) 5 JT 462 : (1996) 2 LLJ 665 : (1996) 3 SCALE 223 : (1996) 4 SCC 584 : (1996) 3 SCR 1069 : (1996) 2 UJ 437 belongs to the second category where the Bye-laws were interpreted as not giving an option "to retire" but only provided a limited right to "seek" retirement thereby implying the need for a consent of the employer even if the period of the notice has elapsed. We shall refer to these two categories in some detail.

10. In *Dinesh Chandra Sangma Vs. State of Assam and Others*, AIR 1978 SC 17 : (1977) LabIC 1852 : (1978) 1 LLJ 17 : (1977) 4 SCC 441 : (1978) 1 SCR 607 : (1977) 9 UJ 682 , this Court was dealing with F.R. 56 (c) as it stood then. The Court pointed out that FR 56(b) and FR 56(c) referred to rights respectively conferred on the State and on the employee. FR 56(b) conferred a right on government to compulsorily retire an employee in public interest by giving him notice of not less than 3 months in writing or 3 months pay and allowances in

lieu of such notice, after he attained 50 years of age or had completed 25 years of service, whichever was earlier. Correspondingly FR, 56(c) stated as follows:

FR 56(c): Any Govt. servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years or has completed 25 years of service, whichever is earlier.

It was held by the three Judge Bench that it was clear that effect of FR 56(c) was statutory unlike in the case of contracts of employment requiring an express order of acceptance of the retirement notice. It was stated (p.445):

"There was no question of acceptance of the request for voluntary retirement by the Govt. when the Govt. servant exercises his right under FR 56(c)." It was again stated (p.447):

"FR 56 is one of the statutory rules which binds the Govt. as well as the Govt. Servant. The condition of service which is envisaged in Rule 56(c) giving an option in absolute terms to a Govt. Servant to voluntarily retire with three months' previous notice, after he reaches 50 years of age or has completed 25 years of service, cannot therefore be equated with a contract of employment as envisaged in Explanation 2 to Rule 119."

and at (p.447-448) as follows:

"The appellant has voluntarily retired by three months' notice, not in accordance with an express or implied term of his contract of employment, but in pursuance of a statutory rule."

11. Another three Judge Bench in *B.J. Shelat Vs. State of Gujarat and Others*, AIR 1978 SC 1109(1) : AIR 1978 SC 1109 : (1978) 37 FLR 156 : (1978) 2 LLJ 34(1) : (1978) 2 SCC 202 : (1978) 3 SCR 553 : (1978) 10 UJ 303 was dealing with Rule 161 (2)(i) of the Bombay Civil Service Rules which contained a proviso similar to the proviso (b) or FR 56(K) to the effect that "it shall be open to the appointing authority to withhold permission to retire to a Govt. servant who is under suspension, or against whom departmental proceedings are pending or contemplated, and who seeks to retire under this sub-clause". It was noticed that no suspension was in force and no departmental proceedings were pending but on facts, it could be said that a departmental proceeding was noticed that no suspension was in force and no departmental proceedings were pending but, on facts, it could be said that a departmental proceeding was under contemplation. However, on a reading of the Rule and the proviso, it was held that inasmuch as no order refusing permission was passed or communicated within the notice period, the voluntary retirement took effect automatically. The Court observed that this result followed even though the right to retire conferred on the employee was not as absolute as in *Dinesh Chandra Sangma's* case but was a qualified right. The Court held (p.205) as follows:

"A right is conferred on the Govt. Servant under Rule 161(2)(ii) to retire by giving not less than three months' notice on his attaining the prescribed age.

Such a right is subject to the proviso which is incorporated to the sub-section which reads as follows.....

But for the proviso, a Govt. servant would be at liberty to retire by giving not less than three months" notice in writing to the appointing authority on attaining a prescribed age this position has been made clear by this Court in Dinesh Chandra Sangma Vs. State of Assam and Others, AIR 1978 SC 17 : (1977) LabIC 1852 : (1978) 1 LLJ 17 : (1977) 4 SCC 441 : (1978) 1 SCR 607 : (1977) 9 UJ 682 , where the Court was considering the effect of the (Assam) Fundamental Rule 56(c)....."

The Court further stated (p.206):

"But for the proviso to Rule 161(2)(ii), the decision of this Court in the case Cited above would be applicable and the right would have been absolute. But the proviso has restricted the right conferred on the Govt. servant.... Thus the permission to retire can be withheld by the appointing authority either when the Govt. servant is under suspension or against whom departmental proceedings are pending or contemplated.....No departmental proceeding was pending but on the facts, one cannot say that a proceeding was not under contemplation."

Having stated that the right conferred on the government servant was not absolute but conditional and that one of the conditions, namely, that departmental proceedings were contemplated, was in existence which could have been taken advantage of by the Govt. the Court held (p.207) as follows:

"In the case before us it is incumbent on the appointing authority to withhold permission to retire on one of the conditions mentioned in the proviso. We are of the opinion that the proviso contemplates a positive action by the appointing authority."

and it was finally declared (p.207):

For the proviso to become operative, it is necessary that the government should not only take a decision but communicate it to the govt. servant..... admittedly the order of suspension was not communicated before the date of superannuation".

And explaining the identical proviso in the proviso (b) to FR 56(k), this Court again reiterated that (p.208):

"It is incumbent on the govt, to communicate to the government servant its decision to withhold permission to retire on one of the grounds specified in the proviso."

It was further made clear that the appointing authority "has no jurisdiction to take disciplinary action against a government servant who had effectively retired."

It was held (p.209) that:

"disciplinary action cannot be taken after the date of retirement. Therefore, it was necessary to communicate the decision of refusal of permission before the expiry of the notice period.

12. The third case which falls in the first category is the one in *Union of India and others Vs. Sayed Muzaffar Mir*, AIR 1995 SC 176 : (1994) 6 JT 288 : (1995) 1 LLJ 157 : (1994) 4 SCALE 258 : (1995) 1 SCC 76 Supp : (1994) 3 SCR 729 Supp , decided by a Bench of two learned Judges. In this case, the above-said two rulings were followed. The case arose under Rule 1802 (b)(1) of the Railway Establishment Code. In that case, the respondent had given a notice on 22.7.85 of 3 months to the Railways to retire from service as visualised by Rule 1802(b). The period expired on 21.10.1985 and the order of removal was passed on 4.11.1985. The proviso to the Rule permitted withholding of permission to retire in case the employee was under suspension. As a fact, the employee was under suspension at the relevant time and this could have been taken advantage of by the govt. In fact, Rule 1801(d) which started with a non-obstante clause, stated that the competent authority might require a railway servant under suspension to continue his service beyond the date of his retirement in which case he shall not be permitted by that authority to retire from service and shall be retained in service till such time as required by that authority. It was held that even though the officer was under suspension and the request for retirement could be denied, still an order withholding such permission or requiring him to continue was required to be passed. It was "admitted" that no such order was passed. Therefore, it was held that the employer had not exercised a right given to it under Rule 1801(d). The Court further observed that in *Dinesh Chandra Sangma Vs. State of Assam and Others*, AIR 1978 SC 17 : (1977) LabIC 1852 : (1978) 1 LLJ 17 : (1977) 4 SCC 441 : (1978) 1 SCR 607 : (1977) 9 UJ 682 it was held that "the same does not require acceptance and comes into effect on the completion of the notice period" and that decision was followed in *B.J. Shelat Vs. State of Gujarat and Others*, AIR 1978 SC 1109(1) : AIR 1978 SC 1109 : (1978) 37 FLR 156 : (1978) 2 LLJ 34(1) : (1978) 2 SCC 202 : (1978) 3 SCR 553 : (1978) 10 UJ 303 . The Court finally held:

"The period of notice in the present case having expired on 21.10.1985, and the first order of removal having been passed on 4.11.1985, we held that the Tribunal had rightly come to the conclusion that the order of removal was non-est in the eye of law."

13. Thus from the aforesaid three decisions it is clear that if the right to voluntarily retirement is conferred in absolute terms as in *Dinesh Chandra Sangma*'s case by the relevant rules and there is no provision in Rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in *B.J. Shelat*'s case and as in *Sayed Muzaffar Mir*'s case, the concerned authority is empowered to withhold permission to retire if certain conditions exist, viz. in case the employee is under suspension or in case a

departmental inquiry is pending or is contemplated, the mere pendency of the suspension or departmental inquiry or its contemplation does not result in the notice of voluntary retirement not coming into effect on expiry of the period specified. What is further needed is that the concerned authority must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J. Shelat's case and in Sayed Muzaffar Mir's case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission.."

7. Learned Counsel for the petitioner submits that in this view of the matter, the petitioner's case is fully covered under the law laid down by Hon'ble Supreme Court and the writ petition- deserves to be allowed.

8. Ms. Akansha Sharma, learned Counsel for the respondents submits that the services of the petitioner were governed by General Insurance (Rationalisation of Pay Scales and other Condition of Service of Development Staff) Scheme, 1976 as amended from time to time. The impugned notice of termination was passed on 19.5.2000 under sub-para (6) of Para 11 of the Scheme and the petitioner had alternative remedy to file an appeal before the Appeals Committee within 30 days from the date of receipt of notice. The petitioner did not file any appeal against the said notice of termination as provided in proviso-1 of sub-para (6) of Para-11 of the Scheme before the Appeals Committee within 30 days. As such the services of the petitioner stood terminated after completion of 30 days and as such, the petitioner had become disentitled for any post retiral benefits. The prayer of the petitioner for voluntary retirement was also rejected by the Competent Authority vide order dated 5.5.2000. The performance of the petitioner as Development Officer was very poor and was not upto mark and he had failed to maintain his cost ratio within the stipulated limit as provided under sub-clause (c) of Clause (17) of Para-3 of the Scheme.

9. Learned Counsel for the respondents submits that when the petitioner had failed to maintain his cost ratio within the stipulated limit, his basic pay in successive years got reduced to the minimum of scale of Development Officer Grade-II w.e.f. 1.4.1999 and the petitioner was given an opportunity of one year to conform to the stipulated cost limit and was also given warning that his services shall be liable for termination but he did not improve his cost ratio. The petitioner was knowing that on account of the aforesaid fact, termination notice will be given to him. Consequently he gave notice of voluntary retirement on 12.1.2000, which was rightly turned down vide order dated 5.5.2000 by the competent authority. It is absolutely misconceived to say that the period of three months' notice given by the petitioner expired on 12.4.2000, hence there will be deemed acceptance of the same. Since the year 1993-94 the cost ratio of the petitioner exceeded the stipulated limit and he failed to maintain his cost ratio within the stipulated limit and inspite of warning he did not improve the same.

Consequently, his pay scale was reduced to minimum of scale of Development Officer, Grade-It. As such the notice dated 19.5.2000 was given to the petitioner. The petitioner had an opportunity to prefer an appeal before the Appeals Committee within 30 days of receipt of the notice. The petitioner had failed in taking steps for appeal before the Appeals Committee and the time of 30 days provided for appeal expired on 2.8.2000 as such his services stood terminated on 2.8.2000 after completion of 30 days notice. Now the petitioner being a terminated employee is not entitled for any post retiral benefits. The orders dated 5.5.2000 and 19.5.2000 were passed by the Competent Authorities in accordance with law.

10. Learned Counsel for the respondents further submits that the Development Officers of the Company belong to a separate class and are governed by separate set of conditions of service, which are not applicable to other officers of the Company. The Development Officers being special class and a separate Rule, having been framed regarding their conditions of service, the general rules framed for the employees of the company do not automatically become applicable upon the Development Officers. The conditions of service of the Development Officers is governed by General Insurance (Rationalisation of Pay Scales and Other Condition of Service of Development Staff) Scheme, 1976, which came into force w.e.f. 1.5.1976. The Scheme contains detailed terms and conditions of the service of the Development Officers and the benefits to which they will be entitled for. The Scheme inter alia provides for incentives on the basis of business performance of a Development Officer and the entire terms and conditions of the service are linked with the performance of the Development Officer. The Scheme has an overriding effect over any other Scheme framed by the company and the Development Staff by reason of operation of some other Scheme does not automatically become entitled for the benefit arising out from that Scheme. Even for the General Insurance (Employees Pension) Scheme, 1995 the retirement for the Development Officer is to understood within the meaning of General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976 issued under the notification of the Central Government dated 21.2.1976.

11. Learned Counsel for the respondents further submits that even otherwise on the facts of the present case, there can be no voluntary retirement granted to the petitioner inasmuch as the petitioner had given a notice of less than 90 days without giving any reason as to why he has opted for giving notice for less than 90 days. In view of Para 30 of the Employees Pension Scheme, the notice tendered by the petitioner for voluntary retirement does not fall under any of the sub-paragraphs of Para 30. The case of the petitioner does not require consideration under Para 30 as firstly, no reason has been given in his application for seeking voluntary retirement by tendering notice of less than 90 days" and secondly where the notice period is less than 90 days, then it is not necessary for the company to reply the said notice within the period specified by the petitioner. The petitioner had continuously accepted the salary for the months of April, May

and June, 2000, which clearly show that he himself abandoned his request for voluntary retirement and there was no occasion for grant of any voluntary retirement to him. Since the period of notice expired, the petitioner was terminated from the service and his right to get pensionary benefits stands forfeited.

12. Learned Counsel for the respondents has placed reliance on the judgments of Hon"ble Supreme Court in National Textile Corporation (M.P.) Ltd. Vs. M.R. Jhadav, AIR 2008 SC 2449 : (2008) 3 CLT 1 : (2009) 120 FLR 1151 : (2008) 6 JT 48 : (2009) 1 LLJ 224 : (2008) 6 SCALE 613 : (2008) 7 SCC 29 : (2008) 3 SLJ 408 : (2008) AIRSCW 3753 and Commercial Tax Officer, Rajasthan Vs. Binani Cements Ltd. and Another, (2014) AIRSCW 1514 : (2014) 3 JT 378 : (2014) 2 SCALE 436 : (2014) 8 SCC 319 , in support of her submissions. The relevant paragraphs 32 and 34 of judgment in Commercial Tax Officer, Rajasthan's case (supra) are reproduced as under:--

"32. Before we deal with the fact situation in the present appeal, we reiterate the settled legal position in law, that is, if in a Statutory Rule or Statutory Notification, there are two expressions used, one in General Terms and the other in special words, under the rules of interpretation, it has to be understood that the special words were not meant to be included in the general expression. Alternatively, it can be said that where a Statute contains both a General Provision as well as specific provision, the later must prevail.

34. It is well established that when a general law and a special law dealing with some aspect dealt with by the general law are in question, the rule adopted and applied is one of harmonious construction whereby the general law, to the extent dealt with by the special law, is impliedly repealed. This principle finds its origins in the latin maxim of *generalia specialibus non derogant*, i.e., general law yields to special law should they operate in the same field on same subject. (Vepa P. Sarathi, Interpretation of Statutes, 5th Ed., Eastern Book Company; N.S. Bindra's Interpretation of Statutes, 8th Ed., The Law Book Company; Craies on Statute Law, S.G.G. Edkar, 7th Ed., Sweet and Maxwell; Justice G.P. Singh, Principles of Statutory Interpretation, 13th Ed., Lexis Nexis; Craies on Legislation, Daniel Greenberg, 9th Ed., Thomson Sweet and Maxwell, Maxwell on Interpretation of Statutes, 12th Ed., Lexis Nexis)."

13. After having qualifying service the petitioner through his notice dated 12.1.2000 had sought his voluntary retirement from the post of Development Officer under Section 30 of General Insurance Pension Scheme 1995. The statutory period for voluntary retirement starts running from the date of submitting voluntary retirement notice and expires after three months and as such, the time had expired on 12.4.2000, whereas the Assistant General Manager, under sub-para (6) of Para-11 of General Insurance (Rationalisation) of Pay Scale and other Conditions of Service of Development Staff (Amendment) Scheme, 1987, had served the notice to the petitioner on 19.5.2000, admittedly beyond the statutory period i.e. 12.4.2000 and subsequently had passed the

impugned termination order. Once the time had lapsed then there was no occasion for filing any appeal against the impugned termination order as the same was nonest in the eyes of law. Once a person has moved an application or served a notice for voluntary retirement then it is always incumbent upon the employer to take appropriate decision, which is required to be made under the statutory provision within the time prescribed. This is not the case of respondent-corporation that the said notice dated 12.1.2000 was not received by the respondent-corporation and as such, there was no requirement to act upon over the said notice. Once it has been received, neither it was accepted nor rejected, then it is always presumed that once the statutory period has expired, the notice is sufficient to be treated for voluntary retirement and as such the person would automatically deemed to be retired from his service.

14. In the aforesaid facts and circumstances of the case, the contention raised by learned Counsel for the respondent-corporation, that the petitioner had got efficacious remedy to file an appeal and once it has not been filed within statutory period then the termination stood confirmed, is also not sustainable. The petitioner himself had moved the notice to the corporation for accepting his voluntary retirement and 90 days" had lapsed in between, thereafter if the Corporation had proceeded for giving any notice for terminating the service of the petitioner and eventually terminated his services, thereafter the plea cannot be taken by the contesting-respondent that the petitioner ought to have filed the statutory appeal against the said termination order.

15. Therefore, the order dated 5.5.2000 and the impugned notice dated 14.5.2000 are nonest and have no relevance in the present facts and circumstances of the case. Once the relationship of master and servant has come to an end, and thereafter if the master takes any decision contrary to the wishes of the servant, it cannot sustain in the eyes of law.

16. Admittedly in the present matter the petitioner had rendered more than twenty years" of service and once he failed to maintain the cost ratio within the stipulated time, his basic pay in successive years got reduced to the minimum of scale of Development Officer Grade II with effect from 1.4.1999 and the petitioner was given an opportunity of one year to conform to the stipulated cost limit and was also given a warning that his services shall be liable for termination. Once the petitioner"s basic pay was reduced to the minimum scale and thereafter at the time of taking decision for terminating his services, consideration predominantly based upon his previous conduct would also not help the respondents. The petitioner had already been penalized for his previous work, then at this juncture again taking a decision solely on the previous work for maintaining his cost ratio would also give an indication that the Corporation was any how determine to dislodge the petitioner from his service. Even the warning letter, which had been admittedly issued after the statutory period was over, could not be sustained.

17. In the present matter, there was no departmental proceedings pending

consideration when the petitioner had moved the notice for voluntary retirement.

18. In the aforesaid facts and circumstances, the orders impugned cannot be sustained and are accordingly quashed. The writ petition is allowed to the extent that the voluntary retirement notice sent by the petitioner dated 12.1.2000 is treated to be the actual date of notice of retirement, and after expiry of 90 days from 12.1.2000, the petitioner was deemed to be voluntary retired on 12.4.2000. The petitioner is entitled for all the retiral benefits in accordance with law.