
(2014) 06 BOM CK 0144

In the Bombay High Court

Case No : Writ Petition Nos. 2668 of 2002, 2346 of 2011 and 1541 of 2008

Jeevan Kashinath Patil

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 235, 309
Payment of Gratuity Act, 1972 — Section 14, 4, 5

Citation : (2014) 5 BomCR 415 : (2014) 4 MhLj 899

Hon'ble Judges : Mohit S. Shah, C.J;M.S. Sanklecha, J

Bench : Division Bench

Advocate : V.P. Patil and Mr. Piyush Shah, Advocate for the Appellant; J.S. Saluja, AGP for Respondent No. 1-State and Mr. Rajesh Datar, for Respondent Nos. 2 and 3, Advocate for the Respondent

Final Decision : Allowed

Judgement

M.S. Sanklecha, J.—These group of three petitions filed under Article 226 of the Constitution of India challenges the refusal of the State of Maharashtra in granting to its employees i.e. the petitioner who have resigned after over 10 years of service, the benefit of gratuity as well as the benefit of earned leave standing to their credit in excess of half of such leave beyond the period of 150 days. This refusal of the State Government to grant gratuity is on the basis of Rule 46(1) of the Maharashtra Civil Service (Pension) Rules 1982 (Pension Rules 1982) which entails forfeiture of past services on resignation. So far as the benefit of accumulated leave is concerned, the State Government has relied upon Rule 67(3) of the Maharashtra Civil Services (Leave) Rules 1981 (Leave Rules 1981) which allows encashment of accumulated leave to the extent of half of such leave subject to a cap of 150 days. Writ Petition Nos. 2668 of 2002 and 1541 of 2008 have been filed directly in this Court by petitioner's who had resigned from the Judicial Services while W.P. No. 2346 of 2011 has been filed by petitioner from the order dated 6 May 2011 of Maharashtra Administrative Tribunal refusing to grant gratuity on the petitioner's resignation from the Sales

Tax Department of State Government.

2. All the three petitions challenge the Constitutional validity of Rule 46(1) of Pension Rules 1982 and Rule 67(3) of Leave Rules 1981.

3. As the issue arising in all these petitions are common, we shall refer to the facts stated in Writ Petition No. 2668 of 2002 for the purpose of this order. The bare facts necessary for the disposal of these petitions are as under:-

(a) On 1 October 1981, the petitioner joined Judicial Service in the State of Maharashtra as Civil Judge, Junior Division;

(b) After working for more than 17 years, by letter dated 17 October 1998, the petitioner tendered his resignation from Judicial Services;

(c) The petitioner's resignation was accepted on 11 December 1998. However, as the petitioner was not granted benefit of gratuity, the petitioner requested for grant of the same having completed in excess of 17 years of service. However, by communication dated 24 August 2002, the petitioner was informed that in view of Rule 46(1) of the Pension Rules, 1982, the petitioner was not entitled to gratuity as his past services stand forfeited on resignation.

(d) The petitions as originally filed only challenged the denial of gratuity by the State Government. However during the pendency of the petitions, the petitioners by amendment also challenged the encashment being restricted to half of such leave subject to a cap of 150 days as provided in Rule 67(3) of the Leave Rules, 1981 to the encashment/enjoyment of earned leave standing to the credit of employee who resigns from services.

4. Before considering the submission made by the parties to these group of petitions, it may be convenient to extract the relevant Rules of the Pension Rules and Leave Rules which have been challenged. Rule 46(1) of Pension Rules 1982 which reads as under:-

Rule 46:-Forfeiture of service on resignation-

(1) Resignation from a service or a post entails forfeiture of past service.

Rule 67 of Leave Rules 1981 as amended in 2001 and applicable reads as under:-

Rule 67:- Leave beyond the date of compulsory retirement or quitting of service

(1)

(2)

(3) A government servant who resigns or quits service shall be entitled cash equivalent in respect of earned leave at credit on the date of cessation of service, to the extent of half of such leave at his credit subject to a maximum of 150 days.

5. Mr. V.P. Patil and Mr. Piyush Shah, learned Counsel in support of these

petitions submit as under:-

(I) Rule 46(1) of Pension Rules, 1982:-

(a) Resignation from service is the same as voluntary retirement from service. In such a case, the benefit of gratuity which is given to a person who retires from service must also be extended to a person who resigns from service. Thus, it is submitted that on plain interpretation of the word resignation, the benefit of gratuity is payable.

(b) Rule 46(1) of the Pension Rules, 1982 which entails forfeitures of past service when a person resigns from his service resulting in non receipt of his gratuity is ultra vires the Constitution. The Rule which forfeits past services only on account of resignation, is contrary to Article 14 of the Constitution of India inasmuch as it is arbitrary and perverse. An honest service rendered by an employee is completely effaced merely on petitioner's resigning from service;

(c) Depriving a person of his right to gratuity by forfeiting his past service as provided in Rule 46(1) of the Pension Rules 1982 amounts to a punishment without following the principles of natural justice. Thus, the above Rule 46(1) of Pension Rules 1982 in treating resignation as dismissal from service amounts to imposing a penalty. This is arbitrary and perverse as it is in violation of Article 14 of the Constitution;

(d) Section 4 of payment of Gratuity Act 1972 (Gratuity Act, 1972) inter alia provides 5 years as qualifying service for grant of gratuity. Besides, as provided in Section 4 of Gratuity Act, 1972 the same is payable even on resignation. The non-obstante clause in Section 14 of the Gratuity Act, 1972 clearly provides that notwithstanding anything inconsistent in any other Act or law the provision of Gratuity Act 1972 shall prevail. Thus, the provisions of Gratuity Act, 1972 would override Rule 46(1) of the Pension Rules 1982 particularly in the absence of any provision in the Pension Rules, 1982 explicitly prohibiting payment of gratuity;

(e) Alternatively, it is submitted that Rule 46(1) of Pension Rules 1982 can have no application in respect of payment of gratuity to an employee who has resigned from service. It would have to be read down so as to necessarily mean that resignation from a service or a post would entail forfeiture of past service for the purpose of considering the same in case the resigned person is re-employed by the State Government or some change in the service condition with retrospective effect is brought about subsequent to resignation. It cannot have any application where the employee has already rendered services to the State Government to receive the gratuity dues payable on the date of the resignation.

(II) Rule 67(iii) of Leave Rules, 1981:-

In terms of Rule 50 of the Leave Rules, 1981, the petitioners are entitled to one day leave for every 11 days of service rendered by each of them. However, to the extent an employee has not availed of the leave, he is paid the amount due on the earned leave to the extent of 180 days. However, Rule 67(3) of Pension Rules

1981 restricts the extent of earned leave which can be encashed in case a person resigns from service is half of such leave to his credit subject to a cap of maximum 150 days. This restriction on earned leave when the employee resigns from the service is arbitrary. Thus in violation of Article 14 of the Constitution of India. Hence, it is submitted that Rule 67(3) be declared as ultra vires to the extent it restricts the encashment of earned leave to only half of the leave to its credit with a cap of 150 days in case of resignation.

6. As against above, Mr. Saluja, AGP and Mr. Datar appearing for the respondent oppose the grant of any relief to the petitioners and submit as under:-

(a) No employee can have any right to receive gratuity as the same is payment made by the employer at his will for the service rendered. Thus the claim for gratuity is not sustainable;

(b) In any event the petitioners being employees of the State are governed by the Pension Rules 1981 and not Gratuity Act, 1972. This has been so held by the Gujarat High Court in Junagadh District Panchayat v/s. Surendr singh D. Rathod & Others 2007 11 CLR 718 and Punjab & Haryana High Court in Municipal Committee, Tohana v/s. Appellate Authority, 1994 1 CRR 1000 wherein in identical circumstances it was held that the Gratuity Act, 1972 would have no application where the employees are governed by Service Rules of State Government. Therefore, it is submitted that no occasion to apply the Gratuity Act, 1972 can arise in the present facts;

(c) The Pension Rules 1982 and particularly, Rule 46(1) thereof specifically provides that on resignation from service, the employee concerned would forfeit his past service. This applies to all employees who resign from service. Therefore, the classification of all employees resigning from service is an intelligible difference and cannot be faulted on the ground of being arbitrary and/or perverse so as to be in violation of Article 14 of the Constitution of India. Thus, Rule 46(1) is constitutional and calls for interference; and

(d) Rule 67(3) of the Leave Rules 1981 clearly provides that resignation would entail a cap on the encashment of credit of leave earned to half of the leave in credit to the to the maximum extent of 150 days. This is a Rule which was known to the petitioner-employee at all times and is a condition of his service. Moreover, this classification of employees who resigned from service being entitled to encashment of earned leave to the extent of half of such leave subject to the extent of 150 days is reasonable classification and is not in violation of Article 14 of the Constitution of India.

7. In these three petitions placed before us, the petitioners have served the State Government for a period in excess of 10 years i.e. 13 years, 12 years and 17 years respectively. It is an admitted position that all of them are governed by the Pension Rules 1982 and Leave Rules 1981. The respondent-employer i.e. State Government has not disputed that all the three petitioners before us had rendered unblemished services to their satisfaction. The grievance of the

petitioners is that having worked for a period in excess of 10 years with the respondent-employer and having discharged their obligation to the satisfaction of the State Government for the above periods, they are entitled to the payment of gratuity by the State Government and to the encashment of credit of leave as applicable to employees who superannuate in normal course.

8. The Pension Rules 1982 as well as the Leave Rules 1981 have been framed by the Governor of Maharashtra in exercise of powers conferred under the proviso to Article 309 to the Constitution of India. This is for the reason that the legislature has not yet made any legislation in respect of conditions of service of persons employed by the respondent-State. These Rules i.e. Pension Rules 1982 and Leave Rules 1981 made by the State are in the exercise of its legislative power. The conditions of service of person employed by the State Government is a legislative prerogative. Therefore, ordinarily, we would not interfere with the Rules so framed under Article 309 of the Constitution of India unless the same are in violation of the Constitution of India. Therefore, while examining the challenge to impugned Rule 46(1) of the Pension Rules, 1982, and Rule 67(iii) of the Leave Rules 1981, we would have to keep in mind the above position of law i.e. we would exercise our jurisdiction only in case the impugned Rules are ultra vires the Constitution of India.

9. It is a settled position in law that members of subordinate judiciary are controlled by the High Court under Article 235 of the Constitution of India, yet the rules regarding the conditions of service of judicial officials of the State Government is within the domain of the legislature or the Governor in exercise of legislative function (see B.S. Yadav and Others Vs. State of Haryana and Others, .

10. We shall first deal with the petitioner's challenge for not being paid gratuity on account of their resignation from service after having served the State Government for over a period of 10 years. The respondent-State has refused to grant gratuity to the petitioners who have resigned from service on the basis of the following two Rules:-

(a) Rule 9-Unless the context otherwise requires, the terms defined in this Chapter are used in the various sets of the Maharashtra Civil Services Rules, in the sense here explained:-

Rule (2) to (36).....

Rule (37) Pension includes a gratuity.

Rule (38) to (54)

(b) Rule 46-Forfeiture of service on resignation:-

(1) Resignation from a service or a post entails forfeiture of past service.

(2) to (5) ...

11. It is submitted on behalf of the petitioners that when an employee resigns

from his service, he voluntarily gives up his job. This voluntary giving up of job which comes into force/effect when the respondent-State accepts the resignation, would be in the nature of "voluntary retirement". This is so, it is submitted as it is not in the nature of termination of service and/or removal of service on account of any misconduct during the course of service. In support, reliance is placed upon the decision of the Supreme Court in *J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others*, wherein while dealing with the word "resignation" in the context of Industrial Disputes Act, 1947 the Apex Court held that when an employee tenders his resignation and the same is accepted by the employer, same would be covered by the expression "voluntary retirement" and would not be in the nature of termination of service. The aforesaid decision of the Apex Court, however, was rendered in the context of the Industrial Disputes Act, 1947 wherein the word "retrenchment" was defined to mean termination by the employer of the service of a workman but did not include voluntary retirement of the workman or the retirement of the workman on reaching at the age of superannuation. It was in the above context that the Supreme Court held that the word "resignation" would fall within the scope of the word "voluntary retirement of the workman". In the Pension Rules 1981, the word "resignation", "termination" and/or "voluntary retirement" have not been defined. Moreover, in the present facts, Rule 46(1) of the Pension Rules 1981 specifically provides forfeiture of all past services where an employee resigns from service. A provision similar to Rule 46(1) of the Pension Rules 1981 is not found in the Industrial Disputes Act 1947. Thus, the above decision of the Apex Court would not apply to the present facts.

12. The petitioner next placed reliance upon the decision of the Apex Court in *Sheelkumar Jain Vs. The New India Assurance Company Ltd. and Others*, wherein the Apex Court has dealt with a provision as in Rule 46(1) of the Pension Rules 1981 in the form of paragraph 22 of the 1995 Pension Scheme formulated by the New India Assurance Company. Paragraph 22 of 1995 Pension Scheme of New India Assurance Company inter alia, provided that resignation of an employee from the service of the Company would entail forfeiture of the entire past service. On the above facts, the Apex Court had held that resignation from service equals to voluntary retirement. Therefore, it is submitted that the above decision is squarely applicable and gratuity should be paid to the petitioners. However, the petitioners' submission loses sight of the fact that in paragraph 30(1) of the 1995 Pension Scheme of New India Assurance Company provides that any employee who has completed 20 years of qualifying service may by giving notice to appointing authority, retire as voluntary retirement from service. In the facts before the Apex Court, the employee concerned has completed more than 20 years and, therefore, his resignation to the appointing authority clearly fell under paragraph 30(1) of the 1995 Pension Scheme of New India Assurance Company. It was in the above context that the Court held that the petitioner therein is entitled to pensionary benefits. In the present facts, there is no provision similar to paragraph 30(1) of 1995 Pension Scheme as framed by New

India Assurance Company. Therefore, in the present facts, the above decision would have no application.

13. Further the above decision of the Apex Court in Shivkumar Jain (supra) came up for consideration in M.R. Prabhakar and Others Vs. Canara Bank and Others, wherein provisions similar to that framed by New India Assurance Company in Shiv Kumar Jain (supra) were framed by the Canara Bank called Pension Regulations 1995. Regulation 22 of Pension Regulation 1995 was similar to Rule 46(1) of the Pension Rules, 1982 before us and Paragraph 22 of 1995 Pension Scheme in the case of Shiv Kumar Jain (supra). The Supreme Court held in N.L. Prabhakar (supra) that in Shiv Kumar Jain (supra) case, the 1995 Pension Scheme did not make a distinction between resignation and voluntary retirement. However, in M.L. Prabhakar (supra), the Supreme Court observed that the concept of "resignation" was not brought within the meaning of definition of retirement as framed under Regulation 2(y) of the Pension Regulation 1995. The Regulation 2(y) of the Pension Regulation 1995 defines retirement as under:

2(y) Retirement means cessation from Bank's services:-

(a) On attaining the age of superannuation specified in Service Regulations or Settlements;

(b) On voluntary retirement in accordance with provisions contained in Regulation 29 of these Regulations;

(c) On premature retirement by the Bank before attaining the age of superannuation specified in service regulations or settlement.

(emphasis supplied)

14. Regulation 29 of Pension Regulations, 1995 itself provides that an employee could, after having completed 20 years of qualifying service by notice to the appointing authority retire from his service. The word "retirement" as defined in the Regulation 2(y) of the Pension Regulation 1995 was voluntary retirement in accordance with the provisions of Regulation 29 thereof. This Regulation 29 of Pension Regulations 1995 was similar to Paragraph 30(1) of 1995 Pension Scheme in the case of Shivkumar Jain (supra). Further, Supreme Court observed in M.R. Prabhakar (supra) that resignation can be tendered at any time irrespective of number of years of service whereas in the case of voluntary retirement, the employee has to complete the qualifying service for getting the retrial benefits. Therefore, the petitioners reliance upon the decision of the Apex Court in Shivkumar Jain (supra) is inappropriate in facts of the present case.

15. The contention of the respondent-State is that in view of the above Rule 46(1) of the Pension Rules 1981-a resignation from a service or post, would result in forfeiture of past service. Consequently, no gratuity is payable to the petitioner as the same is to be paid for services rendered by the employee. Moreover, it is submitted that the etymology of the word "gratuity" itself

suggests that it is a gratuitous payment given to an employee on discharge, superannuation or death resulting in termination of service. Therefore, it is contended by the respondent State that the petitioners have no legal right to claim gratuity.

16. Although the word "gratuity" was originally considered to be in realm of charity, yet, as observed by the Apex Court in *Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others*, , the payment of gratuity is no longer in the realm of charity but a statutory right provided in favour of the employee under the provisions of Gratuity Act, 1972. Therefore, such a right in favour of the employee for gratuity casts an obligation on the employer to pay the gratuity. Although, we are not in this case per se concerned with the Gratuity Act, 1972, the fact that the concept of the "gratuity" is no longer considered to be act of charity cannot be lost sight of even while considering the Pension Rules 1981. Moreover, the only reason put forward by the respondent-State for not-granting gratuity is the mandate of Rule 46(1) of Pension Rules 1982 i.e. resignation entails forfeiture of past service. It would be wise to bear in mind the observation of the Supreme Court in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, wherein at paragraph 111 it has observed that:-

By entertaining into a contract of employment, a person does not sign a bond of slavery and a permanent employee cannot be deprived of his right to resign.

Therefore, as there is a right available to the employer State to remove or compulsorily retire a person from service for misconduct, insolvency or inefficiency in terms of Rule 19 of the Pension Rules 1982 a corresponding right to resign is inherent in the employee. It needs no emphasis that the State should endeavor to be a model employer.

17. The respondent State's submission is that there is no violation of Article 14 of the Constitution of India as the classification done of employees who have resigned as a separate class from others is an intelligible differentia/classification.

18. Although the above classification may satisfy one of the tests for reasonable classification, the differentiation must have rational nexus to the object to be achieved. A person having an unblemished record when he resigns from service is no different from a person with an unblemished record who retires from service. A person can voluntarily retire after putting in 20 years of service and he is entitled to gratuity and pension for life. On the other hand, a person who desires to leave service before completing 20 years of service has no other option but to resign. On resignation, he is admittedly not entitled to get pension. The State Government would be within its rights in insisting that it would pay pension to its employee only after his retirement upon completing at least 20 years service. A person retiring from service after having put in less than 20 years is thus already put to a terrible disadvantage. There is, therefore, no justification for the State to deny him even gratuity, when Parliament has

directed all other employees to pay gratuity to their employees who resigns after putting in 5 years service. In fact Section 5 of the Gratuity Act, 1972 confers power on the Government to exempt any employer/employee from the provision of the Gratuity Act, 1972 specifically provides that such exemption may be granted only if the conditions of service are not less favourable than those under the Gratuity Act, 1972. Therefore, the employees not covered by Gratuity Act, 1972 cannot, therefore, be treated as an inferior class compared to those governed by Gratuity Act, 1972.

Both the classes of employees have rendered services and nothing has been shown to us as to what objective is sought to be achieved by the impugned Rule save and except to hold employees who seek to resign hostage to it. As observed by the Apex Court in Central Inland Water Transport Corporation (*supra*) a contract of employment is not a bond for slavery. Thus non granting of gratuity to employees who have resigned by virtue of Rule 46(1) of the Pension Rule 1982 is clearly arbitrary and in violation of Article 14 of the Constitution of India.

19. Moreover, in the present facts, Rule 46(1) of the Pension Rules 1982 provides for forfeiture of past service on a person resigning resulting in the respondent State not giving gratuity to the petitioners. This even though it does not allege any misconduct or inefficiency on the part of the petitioners. Therefore, not granting of gratuity would mean imposing penalty upon the petitioners without just cause. Normally only dismissal or removal from a post would entail forfeiture of past service and consequently *inter alia* the right to receive gratuity. In this case, the petitioners have rendered services for more than 10 years and yet are being denied their legitimate rights to gratuity without the State following the principle of natural justice and when in fact, there is not even a whisper on part of the respondent-State of any misconduct and/or inefficiency on the part of any of the petitioners before us. Therefore, non-granting of gratuity on giving of resignation by any employee after 5 years of service does amount to imposing the penalty on the petitioner without due process of law and arbitrarily. Therefore, Rule 46(1) of the Pension Rules 1982 is in clear violation of Article 14 of the Constitution of India to the extent the benefit of gratuity is not granted to a person merely because he has resigned from the service.

20. In any case, Section 14 of the Gratuity Act, 1972 *inter alia* provides that the Gratuity Act, 1972 shall have effect notwithstanding anything contained in any other enactment. Section 4 of the Gratuity Act, 1972 *inter alia* provides that the Gratuity should be paid to a person who has resigned from service provided that the person resigned has completed 5 years of service i.e. qualifying service. The Pension Rules 1982 do not specifically provide that gratuity payable for service rendered would also be forfeited. The respondent-State only relied upon Rule 46(1) of Pension Rules 1982 to conclude that as past services are forfeited, any benefit or payments payable to the resigning employee for past service rendered would also stand forfeited. This interpretation completely ignores provisions of Gratuity Act, 1972 which provides for payment of gratuity even on resignation.

The principles laid down in Gratuity Act, 1972 is to be read into the Pension Rules 1982 particularly in the absence of any provisions prohibiting the payment of gratuity on resignation in the Pension Rules 1982. The respondent-State is expected to be a model employer and non-payment of gratuity merely because a person has resigned from its service can hardly be considered as a conduct of a model employer.

21. The respondent-State submits that the Gratuity Act, 1972 is inapplicable and in support place reliance upon the decision of the Gujarat High Court in the matter of Junagadh District Panchayat (supra). The respondent therein was an employee of a Panchayat and was governed by Service Rules made by the State Government. However, the respondent therein had applied to the Controlling Authority under the Gratuity Act, 1972 for payment of gratuity. The Controlling Authority therein without considering the fact that the respondent was an employee of the State and would be governed by specific rules applied the provisions of Gratuity Act, 1972. It was in the above circumstances the Court held that the orders of the controlling authority is without jurisdiction. To the same effect as the Gujarat High Court decision in Junagadh District Panchayat (supra) is the Punjab & Haryana High Court decision in Municipality Committee, Tohane (supra).

22. In this case we are not invoking the provisions of the Gratuity Act, 1972 and the recovery provisions mentioned therein. We are only invoking the principle for the grant of gratuity as found in Gratuity Act 1972 for the purposes of construing Rule 46(1) of the Pension Rules 1982.

23. In view of the above, it would only be appropriate to read down Rule 46(1) of the Pension Rules, 1982 so as not to apply the same to the payment of gratuity to a person only because he has resigned from service after rendering service of over 5 years to the State Government. The gratuity which is paid to an employee is paid in respect of services rendered. The petitioners herein have admittedly rendered services and their right to gratuity accrues after having completed 5 years of service as is evident from compassionate pension/gratuity found in Rule 111(1) of Pension Rules, 1982 which reads as under:-

111-Retirement Gratuity/Death Gratuity:-

(1) A Government servant, who has completed five year's qualifying service and has become eligible for service gratuity or pension under rule 110, shall, on his retirement, be granted retirement gratuity equal to one-fourth of his pay for each completed six monthly period of qualifying service, subject to a maximum of 16 1/2 times the pay."

(2) to (5) ...

The above provision further supports our construction of Rule 46(1) of the Pension Rules 1982. It is only then that Rule 46(1) of the Pension Rules 1982 would be fair and equitable to satisfy the rigours of Article 14 of the Constitution

of India otherwise it would be manifestly arbitrary. It would also do away with the stigma of punishment on the petitioner for not receiving gratuity on termination of service by resignation.

24. So far as the challenge to Rule 67(3) of the Leave Rules 1981 as existing then are concerned, we reproduce the same for convenience and it reads as under:-

Rule 67:- Leave beyond the date of compulsory retirement or quitting of service

(1)

(2)

(3) A government servant who resigns or quits service shall be entitled cash equivalent in respect of earned leave at credit on the date of cessation of service, to the extent of half of such leave at his credit subject to a maximum of 150 days.

It is submitted by the petitioner that the classification of persons who have resigned from service as a separate class to deny the benefit of enjoying the credit of earned leave is arbitrary. There is no basis and/or object to be achieved by such a separate classification for the earned leave to be enjoyed. This is particularly so as there is no difference between a person who retires and a person who resigns after an unblemished period of service.

25. As against the above, the submission of the Respondent-State is that the petitioners were aware of the fact that in terms of Rules 67(3) of the Leave Rules 1982 that there is a limit of half of such leave to their credit subject to cap of 150 days. Therefore it is submitted that it is not open to the petitioner to challenge the same.

26. This submission of the respondent/State is not acceptable as the challenge is to the constitutionality of the Rule. An employee who resign cannot and should not be treated differently from an employee who superannuates in respect of the encashable credit of leave. The classification of resigned employee as a different class from one who is superannuated to the extent of encashable credit of leave is concerned is a classification done without any basis. In any case the respondent State has not been able to point out any objective being achieved by such classification. Thus Rule 67(3) of Leave Rules 1981 is manifestly arbitrary as being violation of Article 14 of the Constitution of India to the extent it limits the benefit to half of such leave to its credit subject to a cap of 150 days on enjoying the benefit of earned leave standing to their credit. This also does entail an element of penalty being imposed upon the employee for resigning from service. Therefore, for the reasons indicated by us herein above while holding that Rule 46(1) of the Pension Rules 1982 has to be read down, we find that Rule 67(3) of the Leave Rules 1981 is unconstitutional.

27. Accordingly, we allow the petition by holding that Rule 46(I) of the Pension

Rules 1981 have to be read down so as to entitle the employees of the State Government to Gratuity in case they resign after completing 5 years of service.

We declare that Rule 67(3) of the Leave Rules 1982 providing for capping on the credit of leave which could be encashed being half of such leave to their credit subject to a cap of 150 days to an employee who has resigned from service as unconstitutional.

28. Accordingly, the Petitions are allowed. No order as to costs.