

**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPS No. 1692 of 2011**

Asha Ram Suryavanshi, S/o Late Motiram Suryavanshi, Aged about 64 years, Cashier Cum Clerk, Bilaspur, Raipur, Kshetriya Gramin Bank, R/o Vill. Mahmand (Lalkhadan), Distt. Bilaspur- (C. G.)

---- **Petitioner**

Versus

1. Chhattisgarh Gramin Bank, Through : Its Chairman, Bilaspur (C.G.)
2. The General Manager Cum Appointing Authority, Bilaspur Raipur Kshetriya Gramin Bank, Now Chhattisgarh Gramin Bank, Bilaspur

---- **Respondent**

For Petitioner	:	Mr. P. N. Bharat, Advocate
For State	:	Mr. B. D. Guru, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board**

26/06/2020

1. The challenge in the present writ petition is to the Annexure P-1 dated 01.12.2004 whereby the respondents have accepted the application for voluntary premature retirement of the petitioner treating it to be an application for resignation from service and have treated the petitioner to have resigned from service w.e.f 11.12.2004.
2. Facts of the case is that the petitioner in the present writ petition was working as the clerk-cum-cashier under the respondents. The petitioner had put in about more than 23 years of service with the respondents from his initial appointment from 01.09.1981. Vide his application the petitioner on 06.10.2004 forwarded a letter to the chairman of the respondent Bank seeking for premature retirement due to certain compelling domestic reasons. This letter

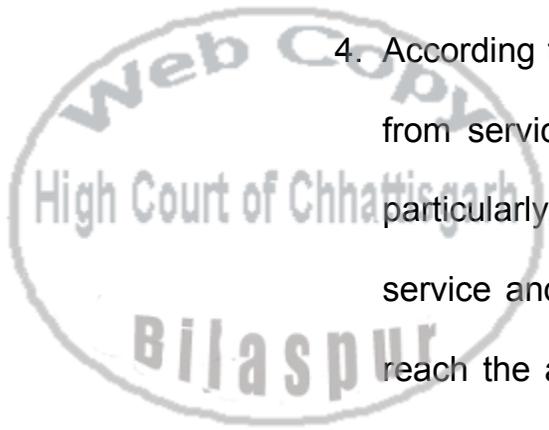


of voluntary premature retirement was treated by the respondent as an application for resignation and accepted the same declaring the petitioner to have resigned from service w.e.f. 11.12.2004. It is this letter of treating the petitioner resigned from service which is under challenge in the present writ petition.

3. Contention of the petitioner is that at no point of time the petitioner ever intended to resign from the service neither is it in any way reflected in the application. According to the petitioner since he had put in more than 23 years and have crossed the age of 57 ½ years of age and due to compelling domestic reasons, he intended to take voluntary retirement from the services of the respondent Bank.

4. According to the petitioner it was never intended by him to resign from service which otherwise has severe consequential effects, particularly, when the petitioner had put in more than 23 years of service and only a couple of years were left for the petitioner to reach the age of the superannuation. According to the petitioner since he had applied for the voluntary retirement and if the respondent Bank was not agreeable to the request made by the petitioner, the respondent ought to have firstly rejected the application moved by the petitioner or secondly they should have called upon the petitioner to seek his views whether in the situation where the voluntary retirement could not be accepted the petitioner intends to resign from the service or not?

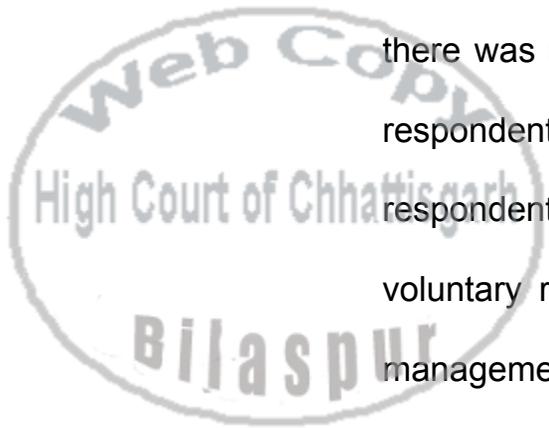
5. According to the petitioner the respondent Bank could not have given their own interpretation to the request made by the petitioner and the Bank also could not have put words for reading into the letter, the words which are otherwise not there for treating the said letter dated 06.11.2004 to be a letter of resignation. Given





the said facts, the petitioner prays for setting aside the impugned order Annexure P-1 with all consequential benefits.

6. Mr. B. D. Guru, counsel appearing for the respondent Bank opposing the petition submits that plain reading of the contents of the Annexure P-2 which was acted upon by the respondent Bank would by itself make it explicit that petitioner was not in a position to work any further. That he had expressed his inability to work and treating the said words of the letter, the Bank had rightly treated it as resignation which cannot be faulted with.
7. According to the respondent Bank the petitioner was working on the post of Clerk-cum-Cashier and he was well aware of the Banks service regulations and he was also aware of the fact that there was no scheme for voluntary retirement in operation in the respondent Bank at that relevant point of time. According to the respondent Bank in the absence of there being any scheme for voluntary retirement the petitioner could not have expected the management to grant him voluntary retirement and thus the counsel for the respondent Bank tried to justify the action of the Bank stating that when the petitioner had categorically expressed his ability to work there cannot be any other presumption but the intention of the petitioner to resign from the service and thus prayed that the impugned order does not warrant interference and also prayed for rejection of the writ petition.
8. Having heard the contentions put forth on either side and on perusal of records it would be relevant at this juncture to first consider the contents of the letter Annexure P-2 dated 06.10.2004 submitted by the petitioner. For ready reference the contents of the letter Annexure P-2 is reproduced hereinunder :-



सादर सविनय करबद्ध हार्दिक अनुरोध है कि मेरी नियुक्ति 1/9/1981 में हुई है इस प्रकार मेरी सेवा लगभग 23 वर्ष पूर्ण हो चुका है।

मेरा जन्मतिथि 10/1/1947 है इस प्रकार मेरा आयु 57 वर्ष 6 माह पूर्ण हो चुका है इसलिए मेरी सेवानिवृत्ति लगभग 25-26 महा शेष है।

मेरे परिवार में कुल 9 सदस्य है जिसमें मैं एकमात्र कमाउ, गरीब हरिजन भूमिहीन, बैंक कर्मचारी हूँ। मेरे दोनों पुत्र शिक्षित बेरोजगार है जिससे मुझे परिवार के पालन पोषण में विकराल कठिनाई एवं परेशानी का सामना करना पड़ रहा है। इसलिए मेरी आर्थिक एवं मानसिक समस्या से ग्रसित हूँ। इलिए उपरोक्त समस्या दयनीय एवं विचारणीय है। इसलिए मैं आपके संस्था में कार्य करने में असमर्थ हूँ।

अतः आपसे विनम्र प्रार्थना है कि मेरी उपरोक्त परिस्थितियों एवं समस्याओं को दृष्टिगत ध्यान देते हुए मुझे नियमानुकूल अवधि पूर्व सेवानिवृत्त करने की असीम अनुकंपा करेंगे।

मुझे आशा ही नहीं पूर्व विश्वास है कि आप अपना उपरोक्त के संदर्भ में अमूल्य सहयोग प्रदान करेंगे। आपके दया पर मैं आपका आजीवन आभारी रहूंगा।
अतः आपके सेवा में प्रार्थना पत्र समर्पित है।

9. Plain reading of the aforesaid letter issued by the petitioner on 06.10.2004 it would clearly reflect that the petitioner had specifically requested the respondent Bank that, since he has reached the age of 57 ½ years and has also completed 23 years of service and since there are certain compelling domestic reasons he was not able to perform his duties effectively and therefore he intended for premature or voluntary retirement. The specific words used by the petitioner in his application is “नियमानुकूल अवधि पूर्व सेवानिवृत्त करने की असीम अनुकंपा करेंगे।” (Please consider granting of premature/voluntary retirement as per rules).

10. The reading of the aforesaid words under no circumstances can be treated to be a letter of resignation. What is also pertinent to take note of is the fact that if at all if the respondent Bank felt





that petitioner does not want to work, they were duty bound to seek clarification from the petitioner as to whether he wants to resign from the service as there was no provision or scheme available so far as premature or voluntary retirement is concerned.

11. There is a clear distinction between the term “resignation” and “voluntary retirement”. The supreme Court in the recent past in the case of **UCO Bank and others Vs. Sanwar Mal, (2004) 4 SCC 412** had elaborately discussed the distinction between the expression “Resignation” and “Voluntary Retirement”. In Paragraph 9 of the said judgment it has been held as under :-

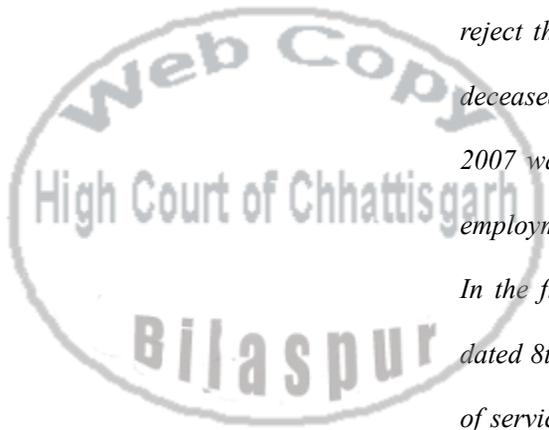
“The words “resignation” and “retirement” carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is severance of employment but in service jurisprudence both the expressions are understood differently. Under the Regulations, the expressions “resignation” and “retirement” have been employed for different purpose and carry different meanings. Moreover, resignation brings about complete cessation of master and servant relationship whereas voluntary retirement maintains the relationship for the purposes 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-a-vis voluntary retirement and acceptance thereof.





12. This aforementioned proposition was further reiterated by the Supreme Court in the case of **Reserve Bank of India & Anr. Vs. Cecil Dennis Solomon and Another, 2004 9 SCC 461**. Again in the case of **Shashi kala Devi Vs. Central Bank of India & Others, (2014) 16 SCC 260**, the Hon'ble Supreme Court had an occasion of dealing with the matter almost similar to the factual matrix of the present case and after discussing the various judicial pronouncements made in the recent past on the issue including the one which are referred to in the preceding paragraphs the Hon'ble Supreme Court in the Paragraph 17 & 18 has held as under :-

"17. When viewed in the backdrop of the above facts, it is difficult to reject the contention urged on behalf of the appellant that what the deceased-employee intended to do by his letter dated 8th October, 2007 was to seek voluntary retirement and not resignation from his employment. We say so in the light of several attendant circumstances. In the first place, the employee at the time of his writing the letter dated 8th October, 2007 was left with just about one and a half years of service. It will be too imprudent for anyone to suggest that a bank employee who has worked with such commitment as earned him the appreciation of the management would have so thoughtlessly given up the retrial benefits in the form of pension etc. which he had earned on account of his continued dedication to his job. If pension is not a bounty, but a right which the employee acquires on account of long years of sincere and good work done by him, the Court will be slow in presuming that the employee intended to waive or abandon such a valuable right without any cogent reasons. At any rate there ought to be some compelling circumstance to suggest that the employee had consciously given up the right and benefit, which he had acquired so assiduously. Far from the material on record suggesting any such conscious surrender abandonment or waiver of the right to retrial benefit including pension, we find that the material placed on record clearly suggests that the employee had no source of income or





sustenance except the benefit that he had earned for long years of service. This is evident from a reading of the letter dated 8th October, 2007 in which the employee seeks release of his retiral benefits at the earliest to enable him to undergo medical treatment that he requires. The letter, as seen earlier, lays emphasize on the fact that for his sustenance the employee is dependent entirely on such benefits. It is in that view difficult for us to attribute to the employee the intention to give up what was rightfully his in terms of retiral benefits, when such benefits were the only source not only for his survival but for his medical treatment that he so urgently required. For a waiver of a legally enforceable right earned by an employee, it is necessary that the same is clear and unequivocal, conscious and with full knowledge of the consequences. No such intention can be gathered from the facts and circumstances of the instant case. The employee's subsequent letters and communication which are placed on record cannot be said to be an afterthought. Being proximate in point of time letter dated 8th October, 2007 must be treated to be a part of the subsequent communication making the employee's intentions clear, at least for purposes of determining the true intention underlying the act of the employee.

18. It is, in our opinion, abundantly clear that the beneficial provisions of a Pension Scheme or Pension Regulations have been interpreted rather liberally so as to promote the object underlying the same rather than denying benefits due to beneficiaries under such provisions. In cases where an employee has the requisite years of qualifying service for grant of pension, and where he could under the service conditions applicable seek voluntary retirement, the benefit of pension has been allowed by treating the purported resignation to be a request for voluntary retirement. We see no compelling reasons for doing so even in the present case, which in our opinion is in essence a case of the deceased employee seeking voluntary retirement rather than resigning."

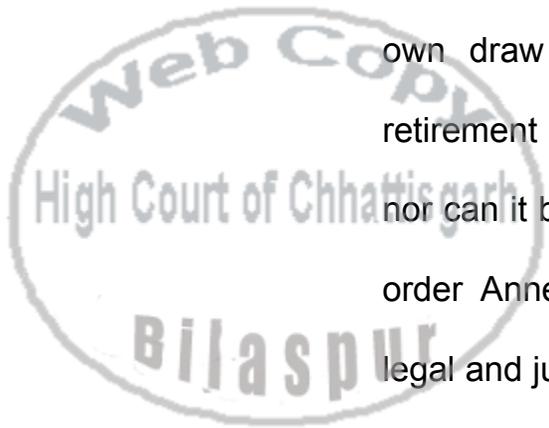
13. In the context of the judicial pronouncement discussed in the preceding paragraphs and considering the terminology "अवधि पूर्व सेवा निवृत्ति" (Premature Retirement/Voluntary Retirement). In



Annexure P-2 put forth by the petitioner it can be safely concluded that the intention of the petitioner was not resignation from service but it was a proposal for considering the claim of the petitioner for voluntary retirement.

14. Another reason why this Court finds it difficult to accept the stand of the Bank in granting resignation is that, there is no specific date mentioned from which the petitioner intended to resign from the service nor can it be treated as a letter of 3 month's notice of resignation which is required. The letter also does not deal with, the depositing of 3 month's salary in lieu of the resignation with immediate effect.

15. In the absence of all these if the respondent Bank on its own draw an inference and interpret the letter of voluntary retirement to be one of resignation the same cannot be accepted nor can it be held to be justified in any manner and the impugned order Annexure P-1 dated 01.12.2004 therefore is not proper, legal and justified and the same deserves to be and is accordingly set aside. As a consequence the petitioner would have to be treated to have been taken back in service and continued in service till he reaches the age of superannuation and petitioner would also be entitled for all consequential benefits including all wages and other retiral dues. The respondent Bank is directed to calculate the aforesaid dues payable to the petitioner treating him to be in service from 11.12.2004 onwards till he attained the age of superannuation and the entire monetary benefits which he would be entitled for, after adjusting any money if any that have already been paid to him shall be released to him forthwith without any further delay within a period of 4 months from the date of receipt of copy of this order. In the event if respondent





Bank fails to release the payment within a period of 4 months the entire dues payable to the petitioner would carry interest at the rate of 6% per annum from the date it fell due till the date of actual payment.

16. With the aforesaid directions, the writ petition stands allowed.

Sd/-
(P. Sam Koshy)
Judge

Rohit

