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SHASHIKALA DEVI

v.

CENTRAL BANK OF INDIA & ORS.

B

(Civil Appeal No. 11488 of 2014)

DECEMBER 17, 2014

**[T. S. THAKUR AND R. BANUMATHI, JJ.]**

C

*Service Law:*

D

*Voluntary retirement – Bank employee – After 34 years of service tendered resignation from service on account of medical ground – Resignation accepted resulting in forfeiture of the entire service rendered by him and disentitling him to claim any pensionary benefit – Whether the letter, was in essence a letter seeking pre-mature retirement or a letter of resignation – Held: The employee was qualified to receive pension in terms of Service Regulations – He was also entitled to seek voluntary retirement and not resignation – Direction to employer-Bank to release the retiral benefits to the employee – Central Bank of India (Employees) Pension Regulations, 1995 – Regulation 29(2).*

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*Pension – Pension since is not a bounty, but a right which is acquired by long service, the Court will be slow in presuming that the employee intended to waive or abandon without any cogent reason.*

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*Waiver – Of legally enforceable right – When admissible – Held: For waiver of legally enforceable right, it is necessary that the same is clear and unequivocal, conscious and with full knowledge of the consequences.*

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*Interpretation of Statutes – While interpreting a statute, court to keep the legislative intent in mind and eschew an interpretation which tends to restrict, narrow down or defeat its beneficial provisions – The beneficial provisions of a Pension Scheme or Pension Regulations should be interpreted liberally so as to promote the object underlying that, rather than denying benefits due to beneficiaries – Service Law – Pension.*

### **Allowing the appeal, the Court**

**HELD: 1.1.** An employee who has completed twenty years of qualifying service is entitled to seek voluntary retirement from service of the Bank provided he gives a notice of not less than three months in writing to the appointing authority in that regard. In terms of proviso to Regulation 29(2) of Central Bank of India (Employees) Pension Regulation, 1995, if the appointing authority does not refuse to grant permission for retirement before the expiry of the period specified in the said notice, the retirement becomes effective from the date of the expiry of the said period. In terms of Regulation 29(3)(a), the appointing authority is competent to curtail the period of notice of three months in appropriate cases subject to the condition that the employee shall not apply for commutation of his pension before the expiry of the notice period. [Para 6][880-G-H; 881-A-B]

1.2. In the present case, the deceased employee had rendered nearly 34 years of service in the respondent-Bank. He was, therefore, qualified to receive pension in terms of the Regulations applicable to him. It is also evident from a reading of Regulation 29 that the deceased-employee was entitled to seek voluntary retirement in terms of Regulation 29 for he had completed

A more than twenty years of service by the 8<sup>th</sup> October, 2007. As on 8<sup>th</sup> October, 2007 the deceased-employee was entitled either to resign from service or to seek premature retirement in terms of Regulation 29. [Para 7][881-C-E]

B 1.3. Whether or not a given communication is a letter of resignation simplicitor or can as well be treated to be a request for voluntary retirement will always depend upon the facts and circumstances of each case and the provisions of the Rules applicable. That is, so even when this Court has always maintained a clear distinction between “resignation” and “voluntary retirement”. [Para 7][881-E-G]

D *UCO Bank and Ors. v. Sanwar Mal* (2004) 4 SCC 412; 2004 (2) SCR 1125; *Reserve Bank of India and Anr. v. CECIL Dennis Solomon and Anr.* (2004) 9 SCC 461 : 2003 (6) Suppl. SCR 465 – referred to.

E 1.4. In the present case, the employee had chosen to leave the employment not because of any disciplinary or other action proposed against him or any order of transfer or posting with which he was unhappy or because any proceedings had been started that could have visited him with any civil consequence if he had continued in service, but because of his physical inability to continue in service on account of diseases with which he was stricken. This is evident from the fact that not only in the letter, but also in documents enclosed therewith the employee has laid great stress on the reasons for leaving the service prematurely. Thus, what the employee intended to do by his letter dated 8<sup>th</sup> October, 2007 was to seek voluntary retirement and not resignation from his employment. [Paras 12 and 14]

H [886-E-H; 887-A; 888-C]

2.1. Pension is neither a bounty nor a matter of grace but is a payment for past services rendered by the employee. 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 reason. 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 retiral benefit including pension, 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 in question, 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 lays emphasise on the fact that for his sustenance, the employee is dependent entirely on such benefits. [Paras 7 and 14][882-D; 888-E-H; 889-A-B]

*D.S. Nakara and Ors. v. Union of India* (1983) 1 SCC 305 : 1983 (2) SCR 165; *Chairman Railway Board and Ors. v. C.R. Rangadhamaiah and Ors.* (1997) 6 SCC 623 : 1997 (3) Suppl. SCR 63; *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd. and Ors.* (1984) 3 SCC 369 : 1984 (3) SCR 325 – relied on.

2.2. It is difficult 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

A 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  
 B intention can be gathered from the facts and  
 circumstances of the instant case. The employee's  
 subsequent letters and communication cannot be said  
 to be an afterthought. Being proximate in point of time  
 C letter dated 8<sup>th</sup> 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. [Para 14][889-B-E]

D 3.1. While interpreting a statute, the Court ought to  
 keep the legislative intent in mind and eschew an  
 interpretation which tends to restrict, narrow down or  
 defeat its beneficial provisions. [Para 8][883-D-E]

E *S. Appukuttan v. Thundiyil Janaki Amma and Anr.*  
 (1988) 2 SCC 372: 1988 (2) SCR 661; *Vatan*  
*Mal v. Kailash Nath* (1989) 3 SCC 79: 1989 (2)  
 SCR 192; *Employees' State Insurance*  
*Corporation v. R.K. Swamy and Ors.* (1994) 1  
 F SCC 445: 1993 (3) Suppl. SCR 461; *Union of*  
*India and Anr. v. Pradeep Kumari and Ors.* (1995)  
 2 SCC 736 : 1995 (2) SCR 703 – relied on.

G 3.2 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,

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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. [Para 15][889-E-G] A

*Sudhir Chandra Sarkar v. Tata Iron and Steel Company Ltd. and Ors.* (1984) 3 SCC 369 : 1984 (3) SCR 325; *Union of India and Ors. v. Lt. Col. P.S. Bhargava* (1997) 2 SCC 28 : 1997 (1) SCR 130; *Sheel Kumar Jain v. New India Assurance Company Limited and Ors.* (2011) 12 SCC 197 : 2011 (9) SCR 574 – relied on. B C

4. The respondent-Bank is directed to treat letter dated 8<sup>th</sup> October, 2007 as a notice for voluntary retirement of the employee and for curtailment for three months notice period. Depending upon the view the competent authority may take on the question of curtailment of the notice period and/or deduction of three months salary from out of the retiral benefits of the deceased-employee, the deceased-employee's claim for payment of retiral benefits due under the relevant rules including pension shall be processed and released in favour of the appellant-widow as expeditiously as possible but not later than six months from the date a copy of this order is served upon the bank. In the event of the Bank's failure to comply with the directions within six months, the amount payable to the employee and after his death his widow, shall start earning interest @ 10% p.a. from the date the period of six months expires. [Para 19][893-F-H; 894-A-B] D E F G

**Case Law Reference:**

2004 (2) SCR 1125

referred to

Para 7

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A	2003 (6) Suppl. SCR 465 referred to	Para 7
	1983 (2) SCR 165 relied on	Para
	1997 (3) Suppl. SCR 63 relied on	Para 7
B	1984 (3) SCR 325 relied on	Para 7
	1988 (2) SCR 661 relied on	Para 8
	1989 (2) SCR 192 relied on	Para 9
C	1993 (3) Suppl. SCR 461 relied on	Para 10
	1995 (2) SCR 703 relied on	Para 11
	1984 (3) SCR 325 relied on	Para 16
D	1997 (1) SCR 130 relied on	Para 16
	2011 (9) SCR 574 relied on	Para 18

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 11488 of 2014.

E From the Judgment and Order dated 11-11-2011 of the High Court of Judicature at Patna in LPA No. 1998 of 2010.

Y. Raja Gopala Rao, Hitendra Nath Rath, Advs. for the Appellant.

F Shish Wad, Ms. Jayshree Wad, M/s J.S. Wad & Co., Advs., for the Respondents.

The Judgment of the Court was delivered by

G **T. S. THAKUR, J.** 1. Leave granted.

2. The short question that falls for our consideration in this appeal by special leave is whether letter dated 8<sup>th</sup> October, 2007 sent by late Shri Mauzi Ram, husband of the appellant,

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was in essence a letter seeking pre-mature retirement on A  
medical grounds or a letter of resignation from the service of  
the respondent-bank. The High Court has while dismissing the  
writ petition and the appeal filed by the deceased-employee  
declared that the letter in question was a letter of resignation B  
that resulted in forfeiture of the entire service rendered by the  
employee disentitling him to claim any pensionary benefits.  
The correctness of that view is under challenge in this appeal  
filed by the widow of the deceased employee who passed  
away during the pendency of the proceedings before the High C  
Court. Since the answer to the question so much depends  
upon the circumstances in which the letter referred to above  
was written by the deceased-employee, we may as well  
reproduce the same in *extenso*:

“Patna D

Date: 09.10.07

To

The Zonal Manager,  
Central Bank of India,  
Zonal Office,  
Patna.

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Though : Proper Channel

Sub: Resignation from the service of bank

Respected Sir,

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With due respect I have to submit the following reasons  
which has compelled me to resign from my service.

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A *In the year 2002 I was attacked with severe carnio cervical spondylisis problem and I was referred to Dr. P.S. Ramani Lilavati Hospital, Mumbai where I had to go under surgical treatment. Within a month time I suffered acute prostate problem also for which I had to*  
B *go for operation at Sheela Urology Centre Patna by Dr. S.S. Ambasta. But I could not get rid of my suffering of and on paid and giddiness goes acute. As a result I have been finding myself unable to move to the extent of discharging routine duty.*

C *Under the circumstances I had to remain on leave on many occasions even on loss of duty.*

D *Of late prostate problem has further aggravated acutely. Presently I am under the treatment of Dr. S.S. Ambasta at Patna. Acute Cervical disease coupled with prostate treatment of Dr. S.S. Ambasta at Patna. Acute Cervical disease coupled with prostate complication has virtually make me totally disabled even to perform my routine work.*

E *In support of my submission I enclose herewith Xerox copies of medical prescriptions of my treatment at Lilavati Hospital, Mumbai and of Urology Centre, Patna and Doctor's prescription towards my present treatment.*

F *Under the above stated circumstances of my health which has made me incapacitated for rendering service in the bank. This in view I tender my resignation from the service of bank. I urge upon your honour to be kind to accept my resignation from service at the earliest so that I may be able to go for advance treatment out of my terminal benefits which is the only left out financial resource for my livelihood and medical treatment. I with*

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my family members will be highly obliged for your kind  
and favourable consideration on my aforesaid request. A

Thanking you,

Yours faithfully, B

(Mauzi Ram)

Clerk,

Rajbanshi Nagar, C

Patna.”

(emphasis supplied)

3. A plain reading of the above makes it manifest that D  
the employee sought relief from the duties attached to his job  
on account of his medical condition that had rendered him  
physically disabled to which he has made extensive reference  
in the letter itself. The letter relies upon and encloses copies E  
of medical prescriptions from the hospital where the employee  
was undergoing treatment in support of his prayer. It was  
because of his incapacity arising out of his failing health that  
the employee prayed for being relieved of his service in the  
bank. What is important is that the employee had prayed for F  
release of his terminal benefits to enable him to undergo  
treatment for his illness. The letter mentions that his terminal  
benefits are the only financial support for his livelihood and the  
treatment that he required.

4. The bank treating the letter of the employee as a letter G  
of resignation from service relieved him apparently because  
the expression used in the letter was resignation which  
obviously meant that no financial burden would fall upon the

A bank in terms of retrial benefits otherwise payable to an employee who has served for the requisite number of years entitling him to retirement.

5. Grant or refusal of pension to the employees of the respondent-bank is regulated by Central Bank of India (Employees) Pension Regulation, 1995. Chapter IV of the said Regulations deals with qualifying service. Regulation 14 of the Regulations appearing in that chapter postulates that an employee who has rendered a minimum of ten years of service in the bank on the date of his retirement or on the date on which he is deemed to have retired shall qualify for pension. Regulation 22 deals with forfeiture of service and, *inter alia*, stipulates that resignation, dismissal, removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service. Chapter V of the Regulations deals with Classes of Pension. While Regulation 28 envisages superannuation pension, Regulation 29 deals with pension on voluntary retirement and read as under:

***“29. Pension on Voluntary Retirement:-***

*(1) On or after the 1<sup>st</sup> day of November, 1993, at any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority retire from service”*

*Provided that this sub-regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year;*

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*Provided further that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector understanding or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement.*

*Provided that this sub-section shall not apply to an employee who is deemed to have retired in accordance with clause (1) of regulation 2.*

2. the notice of voluntary retirement given under sub-regulation (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.*

(3) (a) An employee referred to in sub-regulation

(1) may make a request to the appointing authority retirement of less than three months giving reasons therefor :

(b) On receipt of a request under clause (a), the appointing authority may, subject to the provisions of sub-regulation (2), consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the

A *condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of three months.*

B *(4) An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:*

C *Provided that the request for such withdrawal shall be made before the intended date of his retirement.*

D *(5) The qualifying service of an employee retiring voluntarily under this regulation shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty-three years and it does not take him beyond the date of superannuation.*

E *(6) The pension of an employee retiring under this regulation shall be based on the average emoluments as defined under clause (d) of regulation (2) of these regulations and the increase not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension."*

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G 6. From a reading of the above, it is evident that an employee who has completed twenty years of qualifying service is entitled to seek voluntary retirement from service of the bank provided he gives a notice of not less than three months in writing to the appointing authority in that regard. What is important is that in terms of proviso to Regulation 29(2), if the

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appointing authority does not refuse to grant permission for retirement before the expiry of the period specified in the said notice, the retirement becomes effective from the date of the expiry of the said period. It is also noteworthy that in terms of Regulation 29(3)(a) the appointing authority is competent to curtail the period of notice of three months in appropriate cases subject to the condition that the employee shall not apply for commutation of his pension before the expiry of the notice period.

7. In the case at hand, Mauzi Ram-the deceased employee had rendered nearly 34 years of service in the respondent-bank. He was, therefore, qualified to receive pension in terms of the Regulations applicable to him. It is also evident from a reading of Regulation 29 that the deceased-employee was entitled to seek voluntary retirement in terms of Regulation 29 for he had completed more than twenty years of service by the 8<sup>th</sup> October, 2007. As on 8<sup>th</sup> October, 2007 the deceased-employee was entitled either to resign from service or to seek premature retirement in terms of Regulation 29 (supra). The question in that backdrop is whether letter dated 8<sup>th</sup> October, 2007 was a letter of resignation simplicitor or could as well be treated to be a letter seeking voluntary retirement. The High Court, as seen earlier, has taken the view that the letter was one of resignation that resulted in the forfeiture of past service under Regulation 22 of the Regulations. The High Court appears to have been impressed by the use of the word "resignation" in the employee's letter dated 8<sup>th</sup> October, 2007. The use of the expression "resignation", however, is not, in our opinion, conclusive. That is, in our opinion, so even when this Court has always maintained a clear distinction between "resignation" and "voluntary retirement". Whether or not a given communication is a letter of resignation simplicitor or can as well be treated to be a request for voluntary retirement will

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A always depend upon the facts and circumstances of each case and the provisions of the Rules applicable. The distinction between the expressions “resignation” and “voluntary retirement” was elaborately discussed by this Court in **UCO Bank and Ors. v. Sanwar Mal (2004) 4 SCC 412** where this  
B Court was examining the provisions of UCO Bank (Employees’) Pension Regulations 1995 applicable to a bank employee who had resigned from service after giving an advance notice to the appointing authority. So also in **Reserve Bank of India and Anr. v. CECIL Dennis Solomon and Anr. (2004) 9 SCC 461** this Court was considering the  
C provisions of the Reserve Bank of India Pension Regulations, 1990 while it made a distinction between what is resignation on the one hand and voluntary retirement on the other. At the same time a long line of decisions have recognised that  
D pension is neither a bounty nor a matter of grace but is a payment for past services rendered by the employee. Decisions of this Court in **D.S. Nakara and Ors. v. Union of India (1983) 1 SCC 305**, and **Chairman Railway Board and Ors. v. C.R. Rangadhamaiah and Ors. (1997) 6 SCC 623**,  
E are clear pronouncements on the subject. Reference may also be made to **Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd. and Ors. (1984) 3 SCC 369** where this Court observed:

F *“18. For centuries the courts swung in favour of the view that pension is either a bounty or a gratuitous payment for loyal service rendered depending upon the sweet will or grace of the employer not claimable as a right and therefore, no right to pension can be enforced through court. This view held the field and a suit to recover pension was held not maintainable. With the modern notions of social justice and social security, concept of pension underwent a radical change and it*

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is now well-settled that pension is a right and payment of it does not depend upon the discretion of the employer, nor can it be denied at the sweet will or fancy of the employer. Deokinandan Prasad v. State of Bihar (1971) 2 SCC 330, State of Punjab v. Iqbal Singh (1976) 2 SCC 1 and D.S. Nakara v. Union of India (1983) 1 SCC 305. If pension which is the retiral benefit as a measure of social security can be recovered through civil suit, we see no justification in treating gratuity on a different footing. Pension and gratuity in the matter of retiral benefits and for recovering the same must be put on par."

(emphasis supplied)

8. It is also well settled by several decisions of this Court that while interpreting a statute the Court ought to keep the legislative intent in mind and eschew an interpretation which tends to restrict, narrow down or defeat its beneficial provisions. In **S. Appukuttan v. Thundiyl Janaki Amma and Anr. (1988) 2 SCC 372** this Court observed:

"16. After the arguments were concluded, learned counsel for the respondents have circulated a copy of the judgment of this Court in CA No. 165 of 1974 etc. **K.M. Mathew v. Hamsa Haji (1987) 3 SCC 326** delivered on 29-4-1987 wherein Section 7-D of the Kerala Land Reforms Act, 1963 as amended by the Kerala Land Reforms (Amendment) Act, 1969 has been interpreted as conferring benefit thereunder only on persons whose occupation of the private forests or unsurveyed lands had a lawful origin and not on persons in unlawful occupation based on trespass or forcible and unlawful entry. We have carefully considered the judgment and find that the



A *pronouncement therein does not in any way lend support to the contentions of the respondents herein. The scheme of Sections 7-A, 7-B, 7-C, 7-D, 8 and 9 of the Kerala Land Reforms Act, 1963 is entirely different and this position is succinctly brought out by the*  
B *following passage in the decision referred to above. The court had summed up the scheme of the Act in the following words: (SCC p. 330, para 5)*

C *On a careful scrutiny of the aforesaid provisions, it becomes abundantly clear that the intention of the legislature was to grant protection only to persons whose possession had a lawful origin in the sense that they had either bona fide believed the lands to be government's land of which they could later seek*  
D *assignment or had taken the lands on lease from persons whom they bona fide believed to be competent to grant such leases or had come into possession with the intention of attorning to the lawful owners or on the basis of arrangements like varam*  
E *etc. which were only in the nature of licences and fell short of a leasehold right. It was not within the contemplation of the legislature to confer the benefit of protection on persons who had wilfully trespassed upon lands belonging to others and whose*  
F *occupation was unlawful in its origin. The expression "in occupation" occurring in Section 7-D must be construed as meaning "in lawful occupation".*

G 9. Again in **Vatan Mal v. Kailash Nath (1989) 3 SCC 79**, this Court observed:

H *"9. ....The intention of the legislature to confer the benefit of Section 13-A to all tenants, provided actual eviction had not taken place, could further be seen by*

*the terms of sub-clause (c). Under sub-clause (c) the provisions of sub-clauses (a) and (b) have been made applicable mutatis mutandis to all appeals or applications for revision preferred or made after the commencement of the amending Ordinance and the only stipulation contained is that the tenant preferring an appeal or an application for revision should apply to the court within a period of thirty days from the date of presentation of the memorandum of appeal or the application for revision for giving him the benefit of Section 13-A....."*

10. Reference may also be made to **Employees' State Insurance Corporation v. R.K. Swamy and Ors. (1994) 1 SCC 445** where this Court observed:

*"14. There is no doubt at all that the said Act is beneficent legislation. If, therefore, it is reasonably possible so to construe the word "shop" as to include the activity of an advertising agency within it, that construction must be preferred."*

11. To the same effect is a later decision of this Court in **Union of India and Anr. v. Pradeep Kumari and Ors. (1995) 2 SCC 736** where this Court declared:

*"8. We may, at the outset, state that having regard to the Statement of Objects and Reasons, referred to earlier, the object underlying the enactment of Section 28-A is to remove inequality in the payment of compensation for same or similar quality of land arising on account of inarticulate and poor people not being able to take advantage of the right of reference to the civil court under Section 18 of the Act. This is sought to be achieved by providing an opportunity to all aggrieved parties whose land is covered by the same*

A notification to seek redetermination once any of them  
has obtained orders for payment of higher  
compensation from the reference court under Section  
18 of the Act. Section 28-A is, therefore, in the nature of  
a beneficent provision intended to remove inequality  
and to give relief to the inarticulate and poor people  
who are not able to take advantage of right of reference  
to the civil court under Section 18 of the Act. In relation  
to beneficent legislation, the law is well-settled that while  
construing the provisions of such a legislation the court  
should adopt a construction which advances the policy  
of the legislation to extend the benefit rather than a  
construction which has the effect of curtailing the benefit  
conferred by it. The provisions of Section 28-A should,  
therefore, be construed keeping in view the object  
underlying the said provision.”

(emphasis supplied)

12. Let us now examine the true purport of the letter  
submitted by the deceased-employee in the light of the above  
principles. Two distinct aspects stand out from the record. The  
first is that the deceased-employee had served for more than  
34 years in the bank and was, therefore, entitled to seek  
voluntary retirement if he chose to leave prematurely. The  
second aspect which is equally important is that the employee  
had chosen to leave the employment not because of any  
disciplinary or other action proposed against him or any order  
of transfer or posting with which he was unhappy or because  
any proceedings had been started that could have visited him  
with any civil consequence if he had continued in service, but  
because of his physical inability to continue in service on  
account of diseases with which he was stricken. This is evident  
from the fact that not only in the letter, but also in documents  
enclosed therewith the employee has laid great stress on the

reasons for leaving the service prematurely. No such reasons were necessary if the employee actually intended to resign in the true sense of that term. Reasons why he was quitting were obviously meant to support his case that he was doing so under the compulsion of the circumstances. This is evident from letter dated 23<sup>rd</sup> November, 2007 from the Regional Manager which has recognised the poor health condition of the deceased-employee and sanctioned 165 days without pay leave in his favour. It is also evident from letter dated 29<sup>th</sup> November, 2007 by which the acceptance of the request of the employee was communicated to him that the employer had taken note of his failing health, expressed the management's sympathy with him and wishing him early recovery from his illness. The letter recognises the commitment of the employee to his duties and the contribution made by him in the growth of the organisation. To that extent there is thus no communication gap between the employee and the employer. The employee's case, however, is that all that he intended to do was to seek premature/voluntary retirement from service. This is, accordingly to the employee, evident also from his letter dated 18<sup>th</sup> December, 2007 addressed within three weeks of the acceptance of the request by the bank. In the said letter the deceased-employee, *inter alia*, said:

*"As such, as per the said representation I requested to accept my resignation from the service. The whole reason and purpose, which I have submitted and stated through my said representation and my left over service of one and half year have forced my conscience to seek voluntary retirement from the service and not resignation from the service in its literal meaning."*

13. The letter once again enclosed with it medical certificates and prescriptions in support of his request that the letter written earlier and the expression used therein may be

A understood in the right spirit and terminal benefits released in  
his favour. The refusal of the management of the bank to treat  
letter dated 8<sup>th</sup> October, 2007 as a request for premature  
retirement was conveyed to the employee on 24<sup>th</sup> June, 2008  
in which the respondent-bank made reference to the decision  
B of this Court in **UCO Bank's** case (supra) whereby Regulation  
22 of the Pension Regulations was upheld by this Court.

14. When viewed in the backdrop of the above facts, it is  
difficult to reject the contention urged on behalf of the appellant  
C that what the deceased-employee intended to do by his letter  
dated 8<sup>th</sup> 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 8<sup>th</sup> October,  
D 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 retiral benefits in the form of pension  
E 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  
F valuable right without any cogent reason. 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  
G abandonment or waiver of the right to retiral 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 8<sup>th</sup>  
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October, 2007 in which the employee seeks release of his A  
retiral benefits at the earliest to enable him to undergo medical  
treatment that he requires. The letter, as seen earlier, lays  
emphasise on the fact that for his sustenance the employee is  
dependent entirely on such benefits. It is in that view difficult B  
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 C  
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. D  
Being proximate in point of time letter dated 8<sup>th</sup> 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. E

15. 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 F  
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 G  
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.

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A 16. We may at this stage refer to a few decisions of this  
Court in which somewhat similar questions have been  
examined and answered by this Court. In **Sudhir Chandra**  
**Sarkar v. Tata Iron and Steel Company Ltd. and Ors.**  
**(1984) 3 SCC 369**, a permanent uncovenanted employee of  
B the company had served for 29 years whereafter he tendered  
his resignation which the employer accepted unconditionally.  
The Company's Retiring Gratuity Rules did not provide for  
payment of gratuity to employees who resigned from service.  
C This Court while reversing the view taken by the High Court  
held that termination of service by resignation was tantamount  
to retirement by resignation entitling the employee to retiral  
benefits. The following passage is apposite in this regard:

D *"7. The contention of the respondent is that the plaintiff*  
*did not retire from service but he left the service of the*  
*Company by resigning his post. This aspect to some*  
*extent agitated the mind of the High Court. It may be*  
*dealt with first. It is not only in dispute, but is in fact*  
*conceded that the plaintiff did render continuous service*  
E *from December 31, 1929 till August 31, 1959. On exact*  
*computation, the plaintiff rendered service for 29 years*  
*and 8 months. Rule 6(a) which prescribed the eligibility*  
*criterion for payment of gratuity provides that every*  
F *permanent unconvenanted employee of the Company*  
*whether paid on monthly, weekly or daily basis will be*  
*eligible for retiring gratuity which shall be equal to half*  
*a month's salary or wages for every completed year of*  
*continuous service subject to a maximum of 20 years'*  
G *salary or wages in all provided that when an employee*  
*dies, retires or is discharged under Rule 11(2)(ii) and*  
*(iii) before he has served the Company for a continuous*  
*period of 15 years he shall be paid a gratuity at the rate*  
*therein mentioned. The expression "retirement" has*  
H *been defined in Rule 1(g) to mean "the termination of*

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service by reason of any cause other than removal by discharge due to misconduct". It is admitted that the plaintiff was a permanent uncovenanted employee of the Company paid on monthly basis and he rendered service for over 29 years and his service came to an end by reason of his tendering resignation which was unconditionally accepted. It is not suggested that he was removed by discharge due to misconduct. Unquestionably, therefore, the plaintiff retired from service because by the letter Annexure 'B' dated August 26, 1959, the resignation tendered by the plaintiff as per his letter dated July 27, 1959 was accepted and he was released from his service with effect from September 1, 1959. The termination of service was thus on account of resignation of the plaintiff being accepted by the respondent. The plaintiff has, within the meaning of the expression, thus retired from service of the respondent and he is qualified for payment of gratuity in terms of Rule 6."

17. In **Union of India and Ors. v. Lt. Col. P.S. Bhargava (1997) 2 SCC 28**, this Court was dealing with a case where the respondent was denied pension on the ground that he had voluntarily retired from service. Dismissing the appeal filed by the Union of India, this Court held that Regulation 16 of the Pension Regulations applicable to the respondent did not deal with voluntary resignations and could not, therefore, be pressed into service to deny pension to the respondent. This Court said:

**"19. Regulation 16 does not cover a case of voluntary resignation. Regulation 16(b) does refer to a case where an officer who has to his credit the minimum period of qualifying service being called upon to resign whose pension can be reduced. Had the Regulations intended**



A        *to take away the right of a person to the terminal*  
          *benefits on his voluntary resigning, then a specific*  
          *provision similar to Regulation 16(b) would have been*  
          *incorporated in the Regulations but this has not been*  
B        *done. Once an officer has to his credit the minimum*  
          *period of qualifying service, he earns a right to get*  
          *pension and as the Regulations stand, that right can*  
          *be taken away only if an order is passed under*  
          *Regulation 3 or 16. The cases of voluntary resignations*  
C        *of officers, who have to their credit the minimum period*  
          *of qualifying service are not covered by these two*  
          *Regulations and, therefore, such officers, who*  
          *voluntarily resign, cannot be automatically deprived of*  
          *the terminal benefits.”*

D        18. In ***Sheel Kumar Jain v. New India Assurance***  
          ***Company Limited and Ors. (2011) 12 SCC 197***, the facts  
          were somewhat similar to the case at hand. The appellant in  
          that case was an employee of an Insurance Company governed  
          by a Pension Scheme which provided, as in the case at hand,  
E        forfeiture of the entire service of an employee should he resign  
          from his employment. The appellant submitted a letter of  
          resignation which resulted in denial of his service benefits  
          under the scheme aforementioned. This Court, however, held  
          that since the employee had completed the qualifying service  
F        and was entitled to seek voluntary retirement under the scheme  
          he could not be said to have resigned so as to lose his pension.  
          This Court said:

G        *“25. Para 22 of the 1995 Pension Scheme states that*  
          *the resignation of an employee from the service of the*  
          *corporation or a company shall entail forfeiture of his*  
          *entire past service and consequently he shall not qualify*  
          *for pensionary benefits, but does not define the term*  
          *“resignation”. Under sub-para (1) of Para 30 of the 1995*

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*Pension Scheme, an employee, who has completed 20 years of qualifying service, may by giving notice of not less than 90 days in writing to the appointing authority retire from service and under sub-para (2) of Para 30 of the 1995 Pension Scheme, the notice of voluntary retirement shall require acceptance by the appointing authority. Since "voluntary retirement" unlike "resignation" does not entail forfeiture of past services and instead qualifies for pension, an employee to whom Para 30 of the 1995 Pension Scheme applies cannot be said to have "resigned" from service.*

**26.** *In the facts of the present case, we find that the appellant had completed 20 years of qualifying service and had given notice of not less than 90 days in writing to the appointing authority of his intention to leave the service and the appointing authority had accepted notice of the appellant and relieved him from service. Hence, Para 30 of the 1995 Pension Scheme applied to the appellant even though in his letter dated 16-9-1991 to the General Manager of Respondent 1 Company he had used the word "resign".*

19. In the result this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is, hereby, set aside and the writ petition filed by the deceased-employee allowed with a direction to the respondent-bank to treat letter dated 8<sup>th</sup> October, 2007 as a notice for voluntary retirement of the employee and for curtailment for three months notice period. Depending upon the view the competent authority may take on the question of curtailment of the notice period and/or deduction of three months salary from out of the retiral benefits of the deceased-employee, the deceased-employee's claim for payment of retiral benefits due under the relevant rules including pension shall be processed and

- A released in favour of the appellant-widow as expeditiously as possible but not later than six months from the date a copy of this order is served upon the bank. In the event of the bank's failure to comply with the directions within six months as indicated above, the amount payable to the employee and after
- B his death his widow, shall start earning interest @ 10% p.a. from the date the period of six months expires. The parties are left to bear their own costs.

Kalpana K. Tripathy

Appeal allowed.