Before M. M. KUMAR, J

BHIM RAJ GOYAL,—*Petitioner*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No. 1992 of 1998

17th March, 2004

Consttitution of India, 1950—Arts. 14, 21, 226 and 300-A—Punjab Civil Services Rules, Vol. II, Part I, RI. 317-A(1)(v), Vol. I, Part I Rl. 7.5(1)—Punjab Civil Services (Premature Retirement) Rules, 1975—Rl. 3—Notice of one month for resignation from service—Acceptance of resignation and petitioner left office—After about 26 years of his resignation, petitioner claiming pensionary benefits—Rejection of—Challenge thereto—Rls. 7.5(1) and 3.17(A)91)(v) provide for forfeiture of qualifiying service on resignation from service—Whether Rl. 7.5 (1) and Rl. 3.17-A(1)(v) are ultra vires to Arts. 14, 21 and 300-A of the Constitution—Held, no—Cases of employees who retired compulsorily or prematurely cannot be compared with those who prefer to resign—An employee who has become deadwood is prematurely retired by keeping in view the larger public interest whereas an employee who is otherwise efficient and capable of discharging his duties acts against public interest by tendering resignation—Such employees not entitled to payment of pension—Petition liable to be dismissed.

Held, that Rule 3.26 is subject to 1975 Rules dealing with premature retirement [or Rule 3.26(d) as applicable to Haryana]. In cases of superannuation, it is evident that an employee would be entitled to pension. However, in cases where an employee resigns from service, he has to forfeit his qualifying service as has been provided by Rule 7.5(1) of the Rules in Volume I and Rule 3.17 (A)(1)(v) of the Rules in Volume II. An employee attaining superannuation stands entirely in a different class than an employee who after exercising his own sweet will has preferred to cashier his relationship with his employer. He has left the employer in the mid

sea without attaining superannuation. The classification between the two categories have been founded on intelligible differentia which has a rational nexus to the object sought to be achieved by permitting superannuated employee in that class to earn pension. The basis of the classification is that there is a class of disciplined employees who wishes to serve till the age of superannuation and the other class which wishes to cashier its relationship with the employer prematurely without waiting for the age of superannuation to arrive. In order to maintain discipline and a bureaccuracy committed to the cause of translating the hopes of founding father into action, a safe tenure upto the age of superannuation has been provided to those who maintain the discipline and those who prefer to violate that discipline, cannot claim the benefits.

(Para 18)

Further held, that the cases of employees who are retired compulsorily or prematurely cannot be compared with those prefer to resign. An employee who has become deadwood is prematurely reitred by keeping in view the larger public interest, whereas an employee who is otherwise efficient and is capable of discharging his duties, acts against public interest, by tendering resignation. Such an employee cannot be awarded with pension. Therefore, the classification between the employees who are retired compulsorily or prematurely, is based on a rational differentia and it has a nexus to the object sought to be achieved.

(Para 19)

Futher held, that there can hardly be any justification to declare that Rule 7.5(1) of the Rules in Volume I read with Rule 3.17-A(1)(v) of the Rules in Volume II as ultravires of Articles 14, 21, and 300-A of the Constitution. Therefore, the constitutional validity of the aforementioned rule is upheld.

(Para 23)

Suresh Monga, Advocate, for the petitioner.

A. G. Masih, D.A.G., Punjab, for the respondents.

JUDGMENT

M. M. KUMAR, J.

(1) This order shall dispose of CWP Nos. 1992 of 1998, 12462 of 1998, 9916 of 2003 and R.S.A. No. 2480 of 2001 as common question of law and facts have been raised in all these cases. Facts are being taken from CWP No. 1992 of 1998 as the arguments have been addressed in the aforementioned petition. In these cases, the following question of law has been raised for determination by this Court :

> "Whether Rule 7.5(1) of Punjab Civil Services rules, Vol. I Part I and Rule 3.17-A(1)(v) of the Punjab Civil Services Rules Vol. II Part I (for brevity, the Rules) are violative of Articles 14, 21, and 300-A of the Constitution ? "

(2) Brief facts of the case are that the petitioner joined service in the Irrigation Department of the respondent—State as Canal Patwari on 27th January, 1942. On 6th March, 1967, he served one month's notice (Annexure P-1) upon the respondents and expressed his desire to resign from the post on account of long illness of his wife. The resignation was accepted on 4th June, 1968 with effect from 7th April, 1967 (Annexure P-2). On account of the resignation, the petitioner had left office after expiry of one month of the submission of his resignation. On 6th January, 1994 after about 26 years of his resignation, the petitioner submitted a detailed representation to the Superintending Engineer, Sirhind Canal Circle, Ludhiana (Annexure P-3) praying for preparation of pension papers and payment of his dues and he was advised,—*vide* letter dated 25th January, 1994 (Annexure P-4) to contact the concerned Division where he submitted his resignation. The petitioner again submitted his representation through his counsel on 5th March, 1994 (Annexure P-5). In reply to the representation, the Executive Engineer informed the petitioner that the rules applicable at that time did not permit grant of any pensionary benefits as he had resigned from the post (Annexure P-6). On 1st September, 1997, the petitioner served a legal notice through his counsel (Annexure P-7) and prayed for grant of pensionary benefits along with all consequential reliefs and interest. The Exective Engineer sent the reply on 24th September, 1997 (Annexure P-8) rejecting his claim for pension as highly belated. Feeling aggreived, the petitioner

approached this Court by filing the instant petition under Article 226 of the Constitution with a prayer that Rule 7.5(1) and Rule 3.17-A(1)(v) of the Punjab Civil Services Rules, Vol. I and II respectively be declared as ultra vires of Articles 14, 21 and 300-A of the Constitution. A consequential relief of quashing order dated 18th March, 1994 (Annexure P-6), declaining the request of the petitioner for grant of pension and other benefits along with consequential relief has also been made. It has further been prayed that the order dated 24th September, 1997 (Annexure P-8) be also quashed.

(3) In the written statement, the stand taken is that the petitioner did not superannuate from service and he had resigned. He is not entitled to retiral benefits. Reliance has been placed on the definition of 'retirement' as given in rule 3.26(a) of the Punjab Civil Service Rules Vol. I Part I as well as Rule 3.17-A(1)(v) of the Punjab Civil Services Rules Vol. II Part I and Rule 7.5(1) of the Punjab Civil Service Rules Vol. II Part I and on that basis, it has been pointed out that resignation from public service where prior permission has been obtained by an employee to take up another appointment may not result into forfeiture of service. It has also been asserted that the Rules have been framed by the State in exercise of power conferred by proviso to Article 309 of the Constitution. The issue with regard to huge delay has also been raised with the submission that the claim is time barred and that the Rules are *intra vires.*

(4) Mr. Suresh Monga, learned counsel for the petitioner has argued that Rule 3.17-A(1)(v) of Vol. II and Rule 7.5(1) of Vol. I of the Rules suffer from vice of arbitrariness, discrimination, vagueness and therefore, the aforementioned rules deserve to be declared ultra vires of Articles 14, 21 and 300-A of the Constitutiion. The learned counsel has submitted that no distinction could be drawn between the petitioner who has resigned from his post and those employees who are seeking voluntary retirement in accordance with the Punjab Civil Services (Premature Retirement) Rules, 1975 or otherwise prematurely retired or who are superannuated under Rules 5.27 (Vol. II) and 3.12 of Vol. I read with Rule 3.26 of Vol. I of the Rules. The learned counsel equated the employee like the petitioners who has resigned with those employees who are compulsorily retired as a penalty in accordance with Rules 5.32(1) adn 5.32(2) (Vol. II) of the Rules or who are granted compensation pension under Rule 5.2 or who are granted

invalid pension because of bodily or mental disability under Rule 5.11 or who are dismissed or removed on account of misconduct or insolvency under Rule 2.5 of the Rules.

(5) According to the learned counsel, there is one common factor present in all types of retirement which end up in earning of pension, namely, severance of relationship of employer and employee. The same common fervour permeate through the resignation. In support of his submission, the learned counsel has referred to a judgment of the Supreme Court in **J. K. Cotton Spinning and Wvg. Mills** *versus* **State of U.P. (1)** and argued that the basic reason for framing the rules for grant of pension is to afford security and protection to the civil servants which is in the larger interest of maintenance of discipline. The learned counsel has urged that the classification for refusal of pension to a resigning employee is based on the mode of parting from service does not constitute a valid ground because every one in the group is severing his relationship whether an employee has resigned or has sought voluntary retirement or has been removed from service or he has been prematurely retired. He has maintained that in all cases, the employees have given best years of their respective lives to the Government service and he would be entitled to pension. He has maintained that classification based on the mode of serverance of relationship of employee and employer cannot consititute a valid basis for grant and refusal of pensionary benefits. Mr. Monga has also referred to the theory of classification to test the vires of the rules contemplated under Article 14 of the Constitution. According to the learned counsel, if the rules are not based on an intelligible differentia then the classification is liable to be declated as arbitrary and discriminatory under Article 14 of the Constitution even if the classification amongst the two classes of employees is based on an intelligible differentia it is further required to be shown that the intelligible differentia has a rational basis and that it has a rationale nexus with the object of the classification. He has placed reliance on the celebrated judgment of the Supreme Court in the case of **State of Bombay** *versus* **F. L. Balsara (2).**

(6) Mr. Monga has then argued that no rule can be sustained in the scheme of our Constitution which may result in dismissal of a confirmed employee without complying with the provisions of Article

(1) 1990 (5) S.L.R. 642
(2) 1951 (1) S.C.R. 682

311(2) or Article 14 of the Constitution. He has invited my attention to para 11 of the judgment in the case of **Central Inland Water Transport Corporation Limited** *versus* **Brojo Nath, (3).** The learned counsel has also placed reliance on the judgments of the Supreme Court in the case of **Menaka Gandhi** *versus* **Union of India, (4)** and **Mohinder Singh Gill** *versus* **Union of India, (5).** In other words, once the Government employee has parted with service then his deferred portion of salary has to be paid with what ever name it may be called. In support of his submission, the learned counsel has placed reliance on two judgments of the Supreme Court in the cases of **D. S. Nakara** *versus* **Union of India, (6)** and **Narasingh Patnaik** *versus* **State of Orissa, (7).**

(7) The learned counsel has then submitted that there are no rationale principles behind the rules to conclude that in one set of cases the employee shall continue to earn pension whereas in other set of cases of resignation, he would lose the right of pension. In the absence of any guidelines available in the Rules, and a determining principle it has to be concluded that Rule 3.17-A and Rule 7.5 of the Rules are arbitrary in nature. For the aforementioned proposition, the learned counsel has placed reliance on a judgment of the Supreme Court in the case of **Subhash Kumar** *versus* **State of Bihar and Others, (8).** Accoriding to the learned counsel, the rules suffer from the vice of vagueness and are violative of Article 14 of the Constitution. He has then placed reliance on paragraphs 4,6,8 and 10 of a judgment of this Court in the case of **Sudarshan Kumar** *versus* **Delhi Tansport Corporation (Delhi), (9).**

(8) He has also argued that Rule 3.17-A (1)(v) and Rule 7.5(1) of the Rules are violate of Article 300-A which provide that every employee has a right to property and cannot be deprived of the same without following the due process of law. The pension is a right to property as has been held in various judgments and, therefore,

(3) AIR 1986 S.C. 1571
(4) AIR 1978 S.C. 597
(5) AIR 1978 S.C. 576
(6) 1983 (2) S.L.R. 246
(7) 1996 (2) R.S.J. 75
(8) J.T. 1991 (1) S.C. 77
(9) 1994 (7) S.L.R. 163

forfeiture of pension by Rule 3.17-A(1)(v) and 7.5(1) violate Article 300-A. He has placed reliance on two Constitution Bench judgments of the Supreme Court in the cases of **Deokinandan Prasad** *versus* **Bihar, (10)** and **State of Punjab** *versus* **K. R. Erry, (11).** The learned counsel has further insisted that Article 23 of the Constitution has also been violated by the impugned rules inasmuch as non-payment of deferred salary would amount to denying the payment of wages which amounts to Begar. Such a course is not permissible under law as has been held by the Supreme Court in the case of **Peoples Union for Democratic Rights** *versus* **Union of India, (12).** The learned counsel has then argued that the terms and conditions of service has to be based on bilateral and mutual understanding and it cannot be one-sided affair. He has placed reliance on a Division Bench judgment of this Court in the case of **Dr. Chaman Lal Sadana** *versus* **State of Punjab, (13).**

(9) The learned counsel has then made a reference to the judgments of the Supreme Court in the cases of **Devkinandan** *versus* **Union of India, (14)** and **A. P. Srivastava** *versus* **Union of India, (15)** and submitted that resignation is a generic term and it has no fixed meaning and in all eventualities, it cannot be considered as forfeiture of service. He has also placed reliance on paras 7, 8 and 9 of the judgment in **M/s J. K. Cotton Spg. and Wvg. Mills's case** *(supra)* and a judgment of Delhi High Court in the case of **Sudarshan Kumar** *versus* **Delhi Transport Corp. (supra).**

(10) Ms. Gurmit Kaur, learned counsel appearing for Mr. R. K. Arora, Advocate in C.W.P. No. 9916 of 2003 and Ms. Shaveta Arora, learned counsel appearing for Mr. H. C. Arora, Advocate in C.W.P. No. 12462 have adopted the arguments raised by Mr. Suresh Monga and have submitted that Rule 3.17-A(1)(v) and Rule 7.5 of the Rules should be declared ultra vires of the Constitution.

(10) (1971) 2 S.C.C. 330
(11) (1973) 1 S.C.C. 120
(12) AIR 1982 S.C. 1473
(13) 1996 (3) S.L.R. 634 (P&H)
(14) 1983 S.L.R. 246
(15) (1995) 6 S.C.C. 227

(11) Mr. A.G. Masih, learned Deputy Advocate General, Punjab as well as Mr. B. B. Gupta, Additional Advocate General, Haryana have argued that there is a rationale basis in distinguishing all categories of employees. According to the learned counsel that distinction is not based on the mode of parting with the service alone. It takes into consideration myraid factors which preceed the severance of relationship between the employee and the employer. Elaborating his argument Mr. Masih has pointed out that an employee who resigns from his post follows a unilateral act without leaving much in the hands of the Government. Similarly, an employee who has committed a misconduct, has to be removed from service because he has failed to discharge his duties to the State as was required by law. The learned counsel has emphasised that it is far from truth that the classification made between a retiring employee and a resigning employee is artificial or that the classification between a superannuating employee and a dismissed employee cannot be made and the same consequances must flow in both the cases. The learned counsel has maintained that if such classification is removed, then the contrary proposition of law could be successfully convassed that unequals were being treated as equal whereas the classification as it now stand treats all equals equally. He has compared various rules to submit that an employee who has resigned cannot expect that his pension and the retiral benefits would remain intact. An employee ordinarily is expected to remain in service up to the date of his superannuation and then earn pension alongwith other retiral benefits. But an employee who serves his relationship earlier to that date unless it is permissible by law does so at his own peril. Learned counsel has submitted that an employee who has gained rich experience in the Government department, cannot be permitted to resign either to join a private service or to contest election or to go abroad. The State requires an efficient and honest bureaucracy to translate the hopes of founding fathers of the Constitution into a living reality and the State in turn provides a secured tenure and other protections. The learned counsel has placed reliance on paragraph 10 of the judgment of the Supreme Court in the case of **Reserve Bank of India** *versus* **Cecil Dennis Solomon, (16)** and argued that similar submissions which have been made by the learned counsel for the petitioner have been rejected by the Supreme Court.

(16) 2004 (9) S.C.C. 461

(12) A general examination of the Civil Service Rules which is spread over two volumes would necessarily be required for expressing any opinion on the respective submissions made by learned counsel for the parties. Both the States of Punjab and Haryana have broadly followed the same Rules which have been framed in exercise of power conferred by proviso to Article 309 of the Constitution. The first volume is devoted to the general principles governing the civil services enumerating the general conditions of service, the maximum age of entry into pensionable service and the age of retirement of the civil servants. After devoting Chapter I and II which deal with the extent of application of Rules and definition of various expressions, chapter III of the Rules enumerates general conditions of service. Rules 3.6., 3.7 and 3.8 of the Rules provide for the minimum or maximum age of entry into pensionable service and Rule 3.26 deals with the age of retirement. The aforementioned rules since have been referred to during the course of hearing would be relevant and read as under :—

Age of entry into Government Service.—

"3.6. A person whose age exceeds 25 years may not ordinarily be admitted into pensionable service under Government.

3.7. The limit in rule 3.6 is extended to :—

(a) twenty-seven years in the case of a person appointed to be a Subordinate Judge Provided that [Advocates] and Pleaders who were actually practising in the High Court or Courts subordinate thereto, will be allowed to substract from their age one year for each year of practice up to maximum of 3 years ;

(b) thirty-five years in the case of Medical Officers, Assistant Directors of Health Services, District Health Officer, District Epidemiologist-cum-Malariolgist, Public Analyst and Dean of Hygiene and Vaccine Institute ;

(c) thirty years in the case of legal practitioners who are appointed as Prosecuting Sub-Inspectors of Police ;

(d) thirty years in the case of ex-soldiers of the Indian— Army who are listed in the Subordinate Police Service ;

(e) thirty-five years in the case of ex-solders and forty years in the case of pensioned soldiers for appointment to the post of forest guards ;

(f) twenty-six years in the case of Punjab Service of Engineers (Irrigation Branch), Class II, on the first day of June immediately preceding the date on which the appointment is made ;

(g) thirty-five years in the case of officers appointed direct to the Punjab Agricultural Services, Classes I and II...

(h) thirty-five years in the case of persons appointed to the Punjab State Legislative Service ;

(i) forty years in the case of District-Attorneys and thirty-five years in the case of Assistant District Attorneys.

3.8. Except where otherwise expressly provided in the Service Rules, the restriction in rule 3.6 may be waived in special circumstances by Heads of Departments in the case of non-gazetted Government employees."

(13) In addition to the above rules from the first Vol. of C.S.R., it would be necessary to make a reference to 1975 Rules concerning premature retirement of specified classes of employees on their fulfilment of certain conditions. Rule 3 of 1975 is extracted below for facility of reference :—

"3. Premature retirement.—(1) (a) The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retirement that employee on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or any date thereafter to be specified in the notice.

(a) The period of such notice shall not be less than three months :

Provided that where at least three months notice is not given or notice for a period less than three months is given, the

employee shall be entitled to claim a sum equivalent to amount of his pay and allowance, at the same rates at which he was drawing them immediately before the date of retirement, for a period of three months, or as the case may be, for the period by which such notice falls short of three months.

(2) Any Government employee may, after giving atleast three months previous notice in writing to appropriate authority retire from service on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice :

Provided that no employee under suspension shall retire from service except with the specific approval of the appropriate authority.

(3) (a) 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 appropriate authroity, retire from service.

(b) The notice of voluntary retirement given under this sub-rule shall require acceptance by the appropriate authority.

(c) Where the appropriate authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement, shall become effective from the date of expiry of the said period.

(4) The employee, who has elected to retire under Sub-Rule (2) or Sub-rule (3) and has given the necessary notice to that effect to the appropriate authority, shall be precluded from withdrawing his notice except with the specified approval of the appropriate authority :

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

(14) Chapter VII of C.S.R. Vol. I Part I is another relevant chapter which regulates dismissal, removal and resignation of civil servants. The subject of forfeiture of service on resignation is dealt with by Rule 7.5 (1) which reads as under :—

Forfeiture of Service on Resignation

"7.5 (1) Resignation from a service or a post, unless it is allowed to be withdrawn in public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies for pension.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government employee on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(4) The appointing authority may permit a person to withdraw his resignation in public interest on the following conditions, namely :—

(i) that the resignation was tendered by the Government employee for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation ;

(ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper ;

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days :

(iv) that the aforementioned period of ninety days shall be observed in the manner that the employee concerned should put in his application for withdrawal of resignation within two months of being relieved and the same should as far as possible be processed within a period of one month ; and

(v) that the post, which was vacated by the Government employee on the acceptance of his resignation or any other comparable post, is available.

(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government employee resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service."

(15) Vol. II of the C.S.R. contains rules regulating pension and provident fund. Rule 2.5 provides that no pension is admissible to a Government employee dismissed or removed from service for misconduct, insolvency or insufficiency except some compassionate allowances with an absolute discretion to the Government. Rule 2.5 reads as under :—

"2.5 No pension may be granted to a Government employee dismissed or removed for misconduct, insolvency or inefficiency but to Government employee so dismissed or

removed, compassionate allowances may be granted when they are deserving of special consideration. Provided that the allowance granted to any Government employee shall not exceed two-thirds of the pension which would have been admissible to him if he had retired on medical certificate."

(16) Chapters III, IV and V are devoted to conditions for qualifying service for pension and the cases in which qualifying service could be reckoned. The various types of pension and conditions for their grant has been dealt with in Chapter V and the amount of pension to be granted to an employee is dealt with in Chapter VI. However, Rule 3.17-A(1) (v) deserves to be extracted as the vires of this rule have also been challenged and the same reads as under :—

"3.17-A(1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service :—

xx xx xx

xx xx xx

(v) Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as provided in the relevant rules or where such resignation has been submitted to take up, with proper permission, another appointed whether temporary or permanent under the Government where service qulifies for pension."

(17) A reference would also be necessary to Rules 5.11, 5.27 and 5.32 because the petitioner has made an attempt to equate the cases of employees resigning from service and who are compulsorily retired from service as penalty. The aforementioned rules are extracted below for ready reference :—

Conditions of Grant

"**5.11**. An invalid pension is awarded. On his retirement from the Public Service, to a Government employee, who by bodily or mental infirmity is permanently incapacitated for the public service, or for the particular branch of it to which he belongs.

5.27. A superannuation pension is granted to a Government employee entitled or required, by rule, to retire at a particular age.

5.32. (1) Under rule 4 of the Punjab Civil Services (Premature Retirement) Rules, 1975, a retiring pension is granted to a Government employee who retires or is required to retire under the aforesaid Rules.

(2)(i) A Government employee compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty pension or gratuity, or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement :

Provided that in the case of a Government employee to whom rule 6.15 applies, additional pension of not less than the limits mentioned in this sub-rule may also be granted.

(ii) Whenever in the case of a Government employee, the Governor passes an order (whether original, appellate or in exercise of powers of review) awarding a pension less than the full compensation pension admissible under these rules, the Punjab Public Service Commission shall be consulted before such order is passed.

Explanation.—In this sub-rule, the expression "pension" includes gratuity.

(iii) A pension granted or awarded under clause (i) or as the case may be, under clause (ii) shall not be than forty rupees per month."

(18) A perusal of Rules 3.6, 3.7 and 3.8 of the Rules in Volume-I show the age of entry of a person into pensionable service under Government. Certain exceptions have been created by Rules 3.7 and 3.8 of the Rules. Rule 3.26 of the Rules in volume I provides for the age of superannuation at 58 years for employees other than class IV employees whereas Class IV employees are to attain the age of superannuation at the age of 60 years. Certain exceptions have been created by Rule 3.26 (c) of the Rules. However, Rule 3.26 is

subject to 1975 Rules dealing with pre-mature retirement (or Rule 3.26(d) as applicable to Haryana). In cases of superannuation, it is evident that an employee would be entitled to pension. However, in cases where an employee resigns from service, he has to forfeit his qualifying service as has been provided by Rule 7.5(1) of the Rules in Volume I and Rule 3.17(A)(1)(V) of the Rules in Volume II. An employee attaining superannuation stands entirely in a different class than an employee who after exercising his own sweet will has preferred to cashier his relationship with his employer. He has left the employer in the mid sea without attaining superannuation. There may be numerous reasons for the employee to tender resignation which may include better opportunities in a multi national company or entering in his own private business or going abroad so on and so forth. The classification between the two categories have been founded on intelligible differentia which has a rational nexus to the object sought to be achieved by permitting superannuated employee in that class to earn pension. Those who resign by exercising their discretion are deprived of pension. The basis of the classification is that there is a class of disciplined employees who wishes to serve till the age of superannuation and the other class which wishes to cashier its relationship with the employer pre-maturely without waiting for the age of superannuation to arrive. In order to maintain discipline and a bureaucracy committed to the cause of translating the hopes of founding father into action, a safe tenure upto the age of superannuation has been provided to those who maintain the discipline and those who prefer to violate that discipline, cannot claim the benefits.

(19) Similarly, there cannot be any comparison between the employees who are pre-maturely retired either under 1975 Rules in Punjab or [Rule 3.26(d) in Haryana] and the employees who have tendered resignation. The 1975 Rules [or under Rule 3.26(d)] are aimed at identifying those employees who have become deadwood and inefficient. Such employees are pre-maturely retired in larger public interest because there would be unnecessary burden on the public exchequer. While deciding the cases with regard to pre-mature retirement, the entire service record of an employee is taken into consideration which leads to the formation of an opinion as to whether the concerned employee has over lived his utility. If the opinion is in the affirmative, then, such employee is retired in public interest. In

this regard, reference may be made to the judgments of Supreme Court in the cases of **Baikuntha Nath Das** *versus* **Chief District Medical Officer, (17), State of Punjab** *versus* **Gurdas Singh, (18), Parbodh Sagar** *versus* **Punjab SEB, (19), and Biswanath Prasad Singh** *versus* **State of Bihar, (20).** The cases of employees who are retired compulsorily or pre-maturely cannot be compared with those who prefer to resign. An employee who has become deadwood is pre-maturely retired by keeping in view the larger public interest, whereas an employee who is otherwise efficient and is capable of discharging his duties, acts against public interest, by tendering resignation. Such an employee cannot be awarded with pension. Therefore, the classification between the employees who are retired compulsorily or pre-maturely, is based on a rational differentia and it has a nexus to the object sought to be achieved.

(20) It would be appropriate to make a reference to the observations made by the Supreme Court in the case of **Kanhariyalal Parasai** *versus* **Union of India, (21).** In that case, the petitioner had applied for voluntary retirement under rule 40 of the Central Civil Service (Pension) Rules, 1971 with effect from a particular date. For that purpose, he served a notice on the Government with a request that the period of three months notice as required by the rule may be waived. He also requested that he may be paid cash equivalent to the entire earned leave and half pay leave under Rule 39(6) of the Central Civil Service (Leave) Rules, 1972. However, his request for waiving the notice period of three months was rejected. As a consequence, he retired on attaining the age of superannuation, Rule 39(1) read with Rule 39(5) provides that no leave is to be granted to a Government servant beyond the date of his retirement and that on superannuation, such a Government servant is to be granted cash equivalent of leave salary for earned leave at his credit. It further provides that where a Government servant retires or is retired from service, pre-maturely or compulsorily, he may be granted leave salary in respect of earned leave to his credit and also in respect of half pay leave subject to the maximum limit provided by the rules. There is

(17) (1992) 2 S.C.C. 299
(18) (1998) 4 S.C.C. 92
(19) (2000) 2 S.C.C. 630
(20) (2001) 3 S.C.C. 305
(21) 1995 Supp. (4) S.C.C. 73

a further proviso that the pension equivalent of other retirement benefits shall be deducted from leave salary payable in respect of half pay leave. Upholding the vires of the aforementioned rules which give a different treatment to an employee retired pre-maturely/compulsory and to those who have retired on superannuation, their Lordships observed as under :—

> "Government servants who retire or are retired prematurely constitute a class distinct from the class of those who avail of the benefit of full service till the date of superannuation and, therefore, if they are governed by separate sets of rules in regard to leave encashment, the latter cannot complain of hostile discrimination or can it be said that the rule governing the latter class is arbitrary as it does not extend the benefit of encashment of half pay leave to those who superannuate in due course. Under Rule 39(1) as soon as the services of a government servant terminates in one way or the other he ceases to be entitled to leave but provision is made for leave encashment and he would be entitled thereto under the rules only. The reasons for permitting encashment of half pay leave not exceeding the period between the date on which he retires or is retired and the date of his normal superannuation is that premature or compulsory retirement deprives the government servant of the chance to avail of half pay leave because of the sudeen termination of his relationship which is not the case with those who retire in due course on superannuation. Since encashment of half pay leave was not admissible under the rules obtaining on the date of the petitioner's superannuation in 1980, the petition is misconceived, more so because the challenge based on Articles 19(1)(f) and Article 14 is not well founded."

(emphasis added)

(21) It is thus evident that in service jurisprudence, the expressions pre-mature retirement, compuls ry retirement and retirement on superannuation are employed for different classes of employees for different reasons. All these classes cannot be clubbed together as unequals cannot be treated as equal. The matter has been

considered by the Supreme Court in the case of **Reserve Bank of India** *(supra)*. The observations of the Supreme Court in the following paragraphs make it abundantly clear that the classification of employees, who have resigned or voluntarily or compulsorily retired, is based on rational differential. The observations of their Lordships read as under :—

> "10. In service jurisprudence, the expressions superannuation, voluntary retirement, compulsory retirement and resignation convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time ; but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, permission of the concerned employer is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary. In **Punjab National Bank** *versus* **P. K. Mittal (AIR 1989 SC 1083)**, on interpretation of Regulation 20(2) of the Punjab National Bank Regulations, it was held that resignation would automatically take effect from the date specified in the notice as there was no provision for any acceptance or rejection of the resignation by the employer. In **Union of India** *versus* **Gopal Chadra Misra (1978(2) SCC 301)**, it was held in the case of a Judge of the High Court having regard to Article 217 of the Constitution that he has an unilateral right or privilege to resign his office and his resignation becomes effective from the date which he on his own volition, chooses. But where there is a provision empowering the employer not to accept the resignation, on certain circumstances e.g. pendency of disciplinary proceedings, the employer can exercise the power.

11. On the contrary, as noted by this Court in **Dinesh Chandra Sangma** *versus* **State of Assam (AIR 1978 SC 17).** While the Government reserves its right to compulsory retire a Government servant. even against his wish, there is a corresponding right of the Government servant to voluntarily retire from service. Voluntary retirement is a condition of service created by statutory provision whereas resignation is an implied term of any employer-employee relationship."

(22) Similar observations have been made in the case of **UCO Bank** *versus* **Sanwar Mal (22)** in the case of a pension scheme floated by regulations framed by UCO Bank. The observations made by their Lordships in this regard read 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 Pension scheme herein is based on adequate contributions from the members of the pension fund and requires the Bank, on actuarial calculation, to make annual contribution to the fund. It is a self-financing scheme, which does not depend upon budgetary support and consequently it constitutes a complete code by itself. The Scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. Moreover, resignation brings about complete cessation of master-and-servant relationship whereas voluntary retirement maintains the relationship for the 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 be complete qualifying service for retiral benefits. Further, there are different yardsticks and criteria for submitting resignation *vis-a-vis* voluntary retirement and acceptence thereof. Hence, there is no merit in the respondent's former argument."

(22) (2004)4 S.C.C. 412

(23) In view of the above, there can hardly be any justification to declare that Rule 7.5(1) of the Rules in Volume I read with Rule 3.17-A(1)(v) of the Rules in Volume II as ultravires of Articles 14, 21 and 300-A of the Constitution. Therefore, the constitutional validity of the aforemetioned rule is upheld.

(24) The argument of the learned counsel that all the categories of employees whether superannuating, resigning, retiring pre-maturely or compulsorily are required to be treated as one category because the result is cessation of relationship as master and servants, can hardly be accepted because it is nothing else but to accept that all dogs and cats are mammals, therefore, all cats are dogs (see Constitution of India by H.M. Seervai, 4th edition (1), page 439 paragraph 9.9). There may be cessation of relationship but the preceding and succeeding events and consequences cannot be ignored. Moreover, as has been observed in the case of **UCO Bank** *(supra)* by the Supreme Court that in case an employee tendered his resignation, his relationship with his employer comes to an end whereas, in case of an employee superannuating, the relationship continues for the purposes of payment of pension. It is also worthwhile to mention that to continue with the entitlement of payment of pension, one has to maintain good conduct. Therefore, I do not find any legal basis to accept the submission made by the learned counsel for the petitioner. The other argument with regard to 'Begar' and violation of Article 300-A including violation of Article 21 of the Constitution would also not require any detailed consideration on account of the fact that Supreme Court in the case of **Reserve Bank of India** *(supra)* has already taken the view that these categories of employees constitute different classes and there is no illegality in treating the separate classes by different set of rules. Therefore, the other argument would not even arise for the consideration of this Court.

(25) For the reasons recorded above, these petitions fail and the same are dismissed. However, in the peculiar facts and circumstances of the case, and the legal controversy raised by the petitioners, I am not inclined to pass any order with regard to costs.

R.N.R.