2025 INSC 881

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
[ARISING OUT OF SLP (CIVIL) NO. 13592 OF 2020]

UNITED BANK OF INDIA ...APPELLANT
(NOW PUNJAB NATIONAL BANK)

VERSUS

SWAPAN KUMAR MULLICK & ORS. ...RESPONDENTS

WITH

CIVIL APPEAL NO. OF 2025
[ARISING OUT OF SLP (CIVIL) NO. 30919 OF 2024]

SWAPAN KUMAR MULLICK ...APPELLANT

VERSUS

UNITED BANK OF INDIA & ORS. ...RESPONDENTS
(NOW PUNJAB NATIONAL BANK)

J U D G M E N T

DIPANKAR DATTA J.

THE APPEALS

1. Leave granted. These appeals, arise out of a common judgment and order dated 17th June, 2020[1] of a Division Bench of the High Court at Calcutta[2]. The operative part of the impugned order reads thus:

[1] impugned order
[2] High Court

A) The judgment and order under appeal dated 1st April, 2016 is set aside.
B) The Board of Directors of the United Bank of India shall consider amendment of Regulation 22 of the United Bank of India (Employees') Pension Regulations, 1995 according to the circular of the Indian Banks Association dated 30th June, 2015 with or without retrospective effect within 3 months of physical communication of this order.
C) The appellant bank by constituting an authority shall determine by 21st October, 2020 upon giving an opportunity to Mullick to place facts and adduce evidence before it whether he could be treated as having voluntarily retired from service, strictly following the judgment of the Supreme Court in **Shashikala** case reported in **(2014) 16 SCC 260** read with **UCO Bank & Ors. Vs. Sanwar Mal** reported in **(2004) 4 SCC 412** and **Senior Divisional Manager, Life Insurance Corporation of India & Ors. Vs. Shree Lal Meena** reported in **(2019) 4 SCC 479**, **BSES Yamuna Power Ltd. Vs. Sh. Ghanshyam Chand Sharma & Anr.** reported in **AIR 2020 SC 76** and the observation made in this judgment and order.
D) Depending on such determination the option form/application submitted by Mullick dated 23rd August, 2010 in the terms of the circular dated 16th August, 2010 for availing of the pension scheme shall be processed by the bank by 20th November, 2020. The appeal (FMA 4412 of 2016) is disposed of by this judgment and order.

(bold in original)

2. The appellant - United Bank of India (now Punjab National Bank)[3] - is aggrieved by the directions contained in (B) to (D) supra; hence, it has preferred the lead appeal.

3. Upon service of notice, the 1st respondent - Shri Swapan Kumar Mullick[4] - has preferred the connected appeal.

FACTS

4. The uncontroverted facts giving rise to the present appeals are as under:

4.1. Mullick joined the services of the Bank as a typist on 23rd November, 1970. Subsequently, he was promoted to the post of

[3] Bank
[4] Mullick

machine operator in the year 1978, and later to the post of head cashier.

4.2. After rendering 36 years of service with the Bank, Mullick tendered his resignation on 21st August, 2006, citing mental depression. The Bank accepted Mullick's resignation on 19th October, 2006, and relieved him from its service.

4.3. On 27th April, 2010, a bipartite settlement was signed between the Indian Banks Association[5] and various unions of workmen. Based on this bipartite settlement, the Bank issued a circular (No.SP/OPTION/2/OM-0293/10-11) dated 16th August, 2010[6] extending 'another option for pension' for the employees who had not opted for the pension scheme under the United Bank of India (Employees') Pension Regulations, 1995[7].

4.4. The circular assumes primacy since it defined retired employees who would be entitled to pensionary benefits. It is this circular upon which Mullick based his claim for pension. Clause 2 of the circular defines retired employees and reads thus:

> *2. Retired employees means those who were in service of the Bank on or after 29th September, 1995 and ceased to be in service of the Bank on account of retirement on Superannuation, Voluntary retirement or on account of VRS under special scheme prior to 27th April, 2010.*

4.5. Clause 3 of the circular lays down the eligibility and terms and conditions, and reads thus:

> *3. Eligibility and terms and conditions:*

[5] IBA
[6] circular
[7] 1995 Regulations

A) This 'another option for pension' will be available to those hitherto non optee retired employees.

i) Retired from the Bank's service on superannuation or on Voluntary retirement on or after 29th September, 1995.
ii) Retired from the Bank's service on account of VRS under special scheme on or after 29th September, 1995 after rendering a minimum of 15 years service.
iii) Died while in service of the Bank on or after 29th September, 1995 (families of the deceased employees may opt for getting family pension).

All of the above retired employees/families of the deceased employees who want to opt for pension now will have to pay 156% of what they received on retirement/death on account of the Bank's contribution to SPF and interest accrued thereon being his/her share of 30% initial funding gap.

4.6. Mullick, on 23rd August, 2010, sought to exercise the option under the circular and filled the form. On 5th October, 2010, the General Manager (Staff Pension) of the Bank returned the application stating that employees who had left the service by opting for voluntary retirement/compulsory retirement/resignation are not eligible to opt for pension.

4.7. On 24th September, 2012, through his advocate, Mullick made a representation to the Bank requesting for reconsideration of his case to opt for pension.

4.8. Having received no response, Mullick filed a writ petition before the High Court *inter alia* praying for a writ of mandamus against the Bank and its officers [respondents 2 to 4 in the connected appeal] to extend the benefit of pension to him.

4.9. Before the writ court, Mullick advanced two-fold submissions: *first*, he submitted that the "resignation letter" submitted by an

employee who has qualified the criteria enabling him to pensionary benefits is liable to be treated as "retirement from service", thereby enabling him to get the said benefit. In support of the same, reliance was placed on the decisions of this Court in ***Bank of Baroda v. S.K. Kool (dead) Through Legal Representatives***[8] and ***Shashikala Devi v. Central Bank of India***[9]; and *secondly*, he relied upon Regulation 14 of the 1995 Regulations and asserted that he was entitled to pension as he had put in qualifying length of service in terms thereof. For facility of reference, Regulation 14 is reproduced below:

> 14. Qualifying Service - Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the Bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension.

4.10. In contrast, the Bank asserted that Mullick was ineligible for the claimed benefits in view of Regulation 22 of the 1995 Regulations which disqualified an employee resigning from service to grant of pension. Regulation 22 reads as follows:

> 22. Forfeiture of service - (1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits;

4.11. The Single Judge, upon considering the rival contentions, formulated the following issue:

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[8] (2014) 2 SCC 715
[9] (2014) 16 SCC 260

> Whether the petitioner's claim for pension becomes barred simply because he had submitted his "resignation" from service instead of seeking "retirement"?

4.12. Several decisions were cited before the Single Judge who, after analysing the same, held that Mullick's case was squarely covered by the decision in ***Shashikala Devi*** (supra). The Court noted that Mullick had served the Bank for 36 years (which was far in excess of the qualifying service of 10 years for grant of pension), had no pending disciplinary proceedings, and had resigned due to mental depression. In such state of mind, the use of the term 'resignation' by Mullick instead of 'retirement' should not deprive him of pensionary benefits to which he was otherwise entitled.

4.13. Consequent upon such findings, the Single Judge of the High Court, on 1st April, 2016, held that Mullick was entitled to opt for pension. The writ petition was allowed with direction to the Bank to extend the benefit of pension to Mullick and pay him his admissible dues within 6 months of the order.

4.14. Against the judgment of the Single Judge, the Bank filed an intra-court appeal[10] before a Division Bench of the High Court.

IMPUGNED ORDER

5. The Division Bench also referred to ***Shashikala Devi*** (supra) and summarised the legal principle propounded therein: if an employee resigns shortly before superannuation, with an unblemished service

[10] F.M.A. 4412 of 2016

record, and does not expressly waive the right to pension, a presumption arises that the employee did not intend to forfeit pension. Furthermore, such resignation should be treated as voluntary retirement if the employee has rendered the qualifying years of service.

6. Thereafter, the Division Bench noted that if circumstances surrounding Mullick's case were covered by those referred to in ***Shashikala Devi*** (supra), then he should be given the benefit thereunder. Acknowledging the absence of any factual finding by the Single Judge on this aspect, as no arguments in this regard were made, the Division Bench set aside the order of the Single Judge and ordered for a decision on Mullick's case by an appropriate authority in view of the circular dated 30th June, 2015 of the IBA suggesting that the banks, who were parties to the bipartite settlement dated 10th April, 2002/27th May, 2002, might consider amendments to Regulation 22 of the Bank Employees (Pension) Regulations, 1995 as far as workmen employees are concerned. According to the Division Bench, the main thrust of the circular dated 30th June, 2015 was that the operation of Regulation 22 may not divest the employees who had rendered qualifying service of past service and their entitlement to pension. The resultant directions given by the Division Bench, premised on such reasoning, have been noted above.

PROCEEDINGS BEFORE THIS COURT

7. After notice was issued in the lead appeal, interim applications for intervention/impleadment were filed by several parties, which were

allowed. The connected appeal, which is in the nature of a cross-appeal, was also filed by Mullick. Accordingly, we have heard the submissions advanced on behalf of the Bank, Mullick and the intervenors.

SUBMISSIONS ON BEHALF OF THE BANK/APPELLANT IN THE LEAD APPEAL

8. The Division Bench has given a direction to 'consider' an amendment to Regulation 22 of the 1995 Regulations. Though it might seem to be innocuous, such a direction in effect is in the nature of a mandate, and such a mandate is in the teeth of several decisions of this Court.

9. Mullick had resigned, and not retired, from service in 2006. He had not opted for pension under the 1995 Regulations but opted for provident fund. Further, all terminal benefits payable to Mullick were paid to him soon after his resignation, in 2006 itself. Mullick, not having opted for pension and not having retired from the Bank's service cannot, as a matter of any legal or statutory right, claim pensionary benefits under the 1995 Regulations.

10. In its decision in ***LIC v. Shree Lal Meena***[11]*,* this Court considered the difference between 'resignation' and 'retirement'. Paragraph 26 of the decision was referred for the proposition that when the legislature extends the application of beneficial legislation to a certain class, its application cannot be extended to classes which are not included.

[11] (2019) 4 SCC 479

11. Further, the impugned order is also contrary to the law laid down in ***M.R. Prabhakar v. Canara Bank***[12] and ***BSES Yamuna Power Ltd. v. Ghanshyam Chand Sharma***[13], which followed the dictum in ***Shree Lal Meena*** (supra).

12. Next, the decision of this Court in ***S.K. Kool*** (supra) was erroneously relied upon by the High Court, since the issue there did not concern resignation of an employee, who is not a pension optee. The issue was related to interplay of punishment of removal from service with superannuation benefit, i.e., pension and/or provident fund and gratuity, as would be due otherwise and without disqualification from future employment. Thus, such decision is clearly distinguishable on facts.

13. Further, in ***S.K. Kool*** (supra), this Court held that an employee, upon whom the punishment of removal with superannuation benefit is imposed, would also be entitled to pension. Hence, the letter/circular of the IBA dated 30th June, 2015 - which made a suggestion to the banks to amend regulation 22 in terms of the decision in ***S.K. Kool*** (supra) – did not relate to a case where an employee has tendered resignation and particularly when he is not a pension optee.

14. Even otherwise, Mullick did not challenge any of the provisions of the regulations or the settlement. Significantly, a challenge to regulation 22 of the UCO Bank (Employees') Pension Regulations, 1995, which is

[12] (2012) 9 SCC 671
[13] (2020) 3 SCC 346

a *pari materia* provision followed by all nationalized banks, has been rejected by this Court in ***UCO Bank & Ors. v. Sanwar Mal***[14].

15. During the pendency of these appeals, a 12th bipartite settlement dated 3rd March, 2024 has been signed between the management of various banks represented through the IBA and various Workmen Unions at the industry level. In terms of clause 37 thereof, employees who resigned from service have been given an option to opt for pension under the 1995 Regulations on the terms and conditions mentioned therein; however, Mullick did not exercise an option in terms thereof.

16. Resting on the aforesaid submissions, it has been prayed that the lead appeal be allowed by setting aside the impugned order and the connected appeal dismissed.

SUBMISSIONS ON BEHALF OF MULLICK/APPELLANT IN THE CONNECTED APPEAL

17. Regulation 22 of the 1995 Regulations is violative of Articles 14 to 16 of the Constitution of India. Although a challenge to the relevant regulation was not made before the High Court, the same is now sought to be challenged in the connected appeal.

18. Regulation 22 classifies employees together for the purpose of denial of pension in violation of Article 14. The classification of employees who have resigned with delinquent employees who have been punished/terminated/removed would be improper. An employee who has resigned would resemble an employee who has availed voluntary

[14] (2004) 4 SCC 412

retirement under Regulation 29; and, thus, for the purpose of pension, he must be classified with an employee who has availed voluntary retirement, especially when the former has completed 20 years of qualifying service.

19. The decision in ***Sanwar Mal*** (supra) is in ignorance of the Constitution Bench decision of this Court in ***State of West Bengal v. Anwar Ali Sarkar***[15]. Further, ***Shree Lal Meena*** (supra) only referred to ***Sanwar Mal*** (supra) and did not consider Regulation 22 independently.

20. This Court's decision in ***Shashikala Devi*** (supra), which differentiated between resignation simplicitor and resignation on health grounds, was not at all considered in ***Shree Lal Meena*** (supra).

21. The relevant paragraph from ***Shashikala Devi*** (supra), which was cited, reads thus:

> **9.** 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 8-10-2007. 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 simpliciter 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.

22. Accordingly, based on the aforesaid submissions and referring to the reasons assigned by the Single Judge to allow Mullick's writ petition, it

[15] (1952) 1 SCC 1

was prayed that the judgment of the Single Judge be restored upon reversal of the impugned order.

SUBMISSIONS ON BEHALF OF THE INTERVENORS

23. The intervenors, while supporting the claim of Mullick, contended that the benefit of pension must be extended to employees who have resigned.

24. There is no provision for workmen to retire from banks before attaining the age of superannuation. Most banks stipulate a minimum of 25 to 30 years in the Officers' Service Regulations, 1979, to retire. Thus, the officers were compelled to resign and not retire.

25. The Bipartite Settlement dated 29th October 1993 triggered the pension scheme by notification of the 1995 Regulations. While the settlement does not provide for forfeiture of service in case of resignation, Regulation 22 provided for forfeiture of service even for resignation. Regulation 22 cannot be used to take away the benefit of pension when an employee is otherwise entitled to it.

26. There exists no difference between payment of bank's contribution of provident fund to those retired on superannuation/voluntary retirement and resignation.

27. Reliance was placed on a letter dated 1st October, 2001 issued by the IBA to show that voluntary retirement was not available to staff under the bipartite settlement, prior to introduction of the pension scheme. Even after the introduction of pension scheme, only those who had opted for pension could retire voluntarily. Thus, the workmen and

officers were compelled to resign, instead of retire. Imposition of such conditions are unconscionable and in the teeth of the decision of this Court in ***Delhi Transport Corporation v. D.T.C. Mazdoor Congress***[16].

28. Denial of pension to a particular group of employees who resigned is discriminatory and violative of Articles 14 and 16 of the Constitution of India. Any employee who has rendered the qualifying period of service must be held entitled to opt for pension.

29. The bipartite settlement grants the benefit of pension to those employees who sought voluntary retirement but does not consider the employees who have resigned and, in that regard, it would be violative of this Court's decision in ***D.S. Nakara v. Union of India***[17].

30. The bipartite settlement scheme dated 8th March, 2024, enjoins employees who resigned between 1st January, 1980 and 27th April, 2010. However, it does not stipulate minimum years of service. Despite that, banks have refused pension to employees who have served less than 20 years of service, as stipulated under regulation 29.

31. In terms of this Court's decision in ***S.K. Kool*** (supra), the benefit of pension was extended even to delinquent employees, whose services were terminated on account of disciplinary action. It would be discriminatory to allow pension benefits to employees who committed fraud on the employer-bank but to disallow employees who resigned.

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[16] 1991 Supp (1) SCC 600
[17] (1983) 1 SCC 305

This would result in an anomalous situation and would be arbitrary and violative of Articles 12, 14, 16 and 21.

32. Lastly, since the terms of employment of these employees are contractual in nature, the conditions imposed which are contrary to the provisions of the Indian Contract Act, 1872 are unsustainable in law. The settlement does not specifically disentitle those who resigned from its application and thus the banks cannot disallow the benefit to such employees who have resigned.

THE ISSUE

33. The issue that arises for determination is: whether an employee resigning from service citing mental depression, after having served his employer much in excess of the period stipulated to qualify for being entitled to pension, forfeits his right to opt for pension in terms of a specific provision in the Pension Regulations for all times to come, or, in view of pension being a social welfare measure for employees in the winter years of their life, adopting a beneficial approach is permissible and/or called for?

ANALYSIS AND REASONS

34. Multiple authorities have been cited on either side to persuade us to answer the question in their favour. A close look at each of the relevant decisions has to be taken to ascertain whether the issue we are concerned with is *res integra*.

35. In ***Reserve Bank of India v. Cecil Dennis Solomon***[18], the employees of the Reserve Bank of India[19] had tendered their resignations in 1988 and were getting superannuation benefits under the provident fund contributory provisions and gratuity schemes. Subsequently, the RBI Pension Regulations, 1990 were framed. The employees, who had tendered resignation in 1988, claimed that they were entitled to pension under these new Pension Regulations and moved the concerned high court for relief whereupon it was held that RBI was legally bound to grant pension to such employees. RBI then challenged the decision of the high court and this Court held that as the employees had tendered resignation, which was different from voluntary retirement, they were not entitled to pension under the Pension Regulations.

36. While allowing the appeal of RBI, a coordinate Bench in ***Cecil Dennis Solomon*** (supra) proceeded to make the following pertinent observations:

> **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, the same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the

[18] (2004) 9 SCC 461
[19] RBI

general rule can be displaced by express provisions to the contrary. ...

37. In ***Sanwar Mal*** (supra), Sanwar Mal - who was initially appointed in UCO Bank on 29th December, 1959 and was thereafter promoted to Class III post in 1980 - resigned from the service of UCO Bank after giving one month's notice on 25th February, 1988. Thereafter, the UCO Bank (Employees') Pension Regulations, 1995 were framed and Sanwar Mal opted for the pension scheme under such regulations. UCO Bank declined to accept his option to admit him into the pension scheme. Sanwar Mal filed a suit for a declaration that he was entitled to pension under the Pension Regulations and for a mandatory injunction directing UCO Bank to make payment of arrears of pension along with interest. The suit was decreed and the decree was affirmed in first appeal and, thereafter, by the relevant high court in second appeal. UCO Bank carried an appeal to this Court, which was allowed and the judgment of the high court set aside. This Court differentiated the expressions "resignation" from "voluntary retirement" by ruling as follows:

> **9.** ... 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 (*sic* is the same) 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. The Pension Scheme herein is based on actuarial calculation; 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 complete qualifying service for retiral benefits. Further, there are different yardsticks and criteria for submitting resignation vis-à-vis voluntary retirement and acceptance thereof. Since the Pension Regulations disqualify an employee, who has resigned, from claiming pension, the respondent cannot claim membership of the fund. In our view, Regulation 22 provides for disqualification of employees who have resigned from service and for those who have been dismissed or removed from service. Hence, we do not find any merit in the arguments advanced on behalf of the respondent that Regulation 22 makes an arbitrary and unreasonable classification repugnant to Article 14 of the Constitution by keeping out such class of employees. The view we have taken is supported by the judgment of this Court in the case of *Reserve Bank of India* v. *Cecil Dennis Solomon*. Before concluding we may state that Regulation 22 is not in the nature of penalty as alleged. It only disentitles an employee who has resigned from service from becoming a member of the fund. Such employees have received their retiral benefits earlier. The Pension Scheme, as stated above, only provides for a second retiral benefit. Hence there is no question of penalty being imposed on such employees as alleged. The Pension Scheme only provides for an avenue for investment to retirees. They are provided avenue to put in their savings and as a term or condition which is more in the nature of an eligibility criterion, the Scheme disentitles such category of employees as are out of it.

38. The difference between 'resignation' and 'retirement', though discussed by this Court in ***Cecil Dennis Solomon*** (supra) and ***Sanwar Mal*** (supra) in *extenso*, we find such distinction not to have been applied by another coordinate Bench in ***Sheelkumar Jain v. New India Assurance Co. Ltd.***[20]. Sheelkumar was an employee of an insurance company governed by a pension scheme which provided forfeiture of the entire service of an employee should he resign from

[20] (2011) 12 SCC 197

his employment. Sheelkumar submitted a letter of resignation which resulted in denial of his service benefits under such scheme. The Bench was, thus, called upon to decide the issue whether the termination of the services of the appellant in 1991 amounted to resignation or voluntary retirement. It was held that since the employee had completed the qualifying service and was entitled to seek voluntary retirement under the scheme, he could not be said to have resigned so as to lose his pension. Referring to the decisions in ***Cecil Dennis Solomon*** (supra) and ***Sanwar Mal*** (supra), the Bench ruled that the Courts there had not been called upon to decide whether the termination of services of the employee was by way of resignation or voluntary retirement. For the reasons assigned, the Bench proceeded to hold that:

> **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 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.

39. Close on the heels of the aforesaid decision came the decision in ***M.R. Prabhakar*** (supra). A further coordinate Bench was seized of appeals concerned with the legality of the claim for pension in *lieu* of contributory provident fund of some officers of Canara Bank who had

resigned and stood relieved from their respective posts prior to 3rd June, 1993, i.e., prior to signing of the statutory settlement dated 29th October, 1993 under the Industrial Disputes Act, 1947, the joint note of even date, followed by the Canara Bank (Employees') Pension Regulations, 1995, which were notified in the Gazette of India on 29th September, 1995. Although the employees succeeded before the single judge, the division bench of the relevant high court held otherwise resulting in the appeals. While repelling the submission that ***Sanwar Mal*** (supra) requires reconsideration and that ***Sheelkumar Jain*** (supra) ought to be followed, the Bench observed as follows:

> **18.** The learned counsel appearing for the appellants have placed heavy reliance on *Sheelkumar Jain* and submitted that in the light of that judgment, the decision rendered in *Sanwar Mal* requires reconsideration. We find it difficult to accept the contention raised by the learned counsel appearing for the appellants.
> **19.** We may point out that in *Sheelkumar Jain* this Court was dealing with an insurance scheme and not the pension scheme, which is applicable in the banking sector. The provisions of both the scheme and the Regulations are not in pari materia. In *Sheelkumar Jain case*, while referring to Para 5, this Court came to the conclusion that the same does not make distinction between "resignation" and "voluntary retirement" and it only provides that an employee who wants to leave or discontinue his service amounts to "resignation" or "voluntary retirement". Whereas, Regulation 20(2) of the Canara Bank (Officers') Service Regulations, 1979 applicable to banks, had specifically referred to the words "resignation", unlike Para 5 of the Insurance Rules. Further, it is also to be noted that, in that judgment, this Court in para 30 held that the Court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement.

40. In ***Shashikala Devi*** (supra), heavily relied on by the Division Bench in the impugned order, the short question that fell for consideration in an appeal before yet another coordinate Bench was whether the letter

dated 8th October, 2007 sent by late Mauzi Ram, husband of Shashikala, was in essence a letter seeking premature retirement on medical grounds or a letter of resignation from the service of the Central Bank of India[21]. The decisions in ***Cecil Dennis Solomon*** (supra) and ***Sanwar Mal*** (supra) were duly considered. It was noted that the orders under challenge in the appeal had taken the view that the letter given by Mauzi Ram was one of resignation that resulted in the forfeiture of past service under Regulation 22 of the relevant regulations of the CBoI. The Bench then expressed its view of the relevant high court being impressed by the use of the word "resignation" in the employee's letter dated 8th October, 2017. The use of the expression "resignation", however, was held not to be conclusive. In the opinion of the Bench, it was not so even when this Court had 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 was held to be always dependent upon the facts and circumstances of each case and the provisions of the rules applicable. After considering several decisions including ***Sudhir Chandra Sarkar v. TISCO***[22] and ***S. Appukuttan v. Thundiyil Janaki Amma***[23], wherein law has been laid down to the effect that pension is a right and payment of it does not depend on the discretion

[21] CBoI
[22] (1984) 3 SCC 369
[23] (1988) 2 SCC 372

of the employer and also 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, it was held that:

> **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 not 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.

Ultimately, having appreciated the attendant circumstances in which Mauzi Ram resigned as well as on consideration of the decision in ***Sheelkumar Jain*** (supra), the Bench proceeded to rule that 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 and that no such intention could be gathered from the facts and circumstances of such case. Relief was thus granted to Shashikala by allowing the appeal and setting aside the judgments under challenge.

41. Next, a somewhat similar issue came up for consideration in ***Asger Ibrahim Amin v. LIC***[24] before a coordinate Bench. The question which fell for consideration is: whether the appellant is entitled to claim

[24] (2016) 13 SCC 797

pension even though he resigned from service of his own volition and, if so, whether his claim on this count had become barred by limitation or laches? After referring to ***Sheelkumar Jain*** (supra), the coordinate Bench observed that the appellant had put in more than 20 years' service and that he ought not to be deprived of pension benefits merely because he styled his termination of services as "resignation" or because there was no provision to retire voluntarily at that time. It was also observed that the Court would be failing in its duty, if it were to go by the letter and not by the laudatory spirit of statutory provisions and the Fundamental Rights guaranteed under Article 14 of the Constitution of India.

42. Although what is expressed in ***Asger Ibrahim Amin*** (supra) could provide succour to Mullick, we note that a subsequent coordinate Bench had the occasion to disagree with the view expressed therein, resulting in a reference *vide* order dated 26th November, 2015.

43. The conflicting conclusions drawn from similar facts and laws, evident in earlier decisions of coordinate Benches comprising two-Judges, came up for resolution before a larger Bench in ***Shree Lal Meena*** (supra) premised on such reference. The divergence of judicial views of this Court having necessitated examination of the issue by a larger Bench, the law was declared in clear terms. Three sets of appeals were before the larger Bench in which one set pertained to employees of Andhra Bank and the rest pertained to employees of public sector insurance companies. The common thread running through all sets of

appeals was that the concerned employees had tendered resignation from service when, admittedly, the Pension Regulations had not been introduced. After its introduction with retrospective effect, the said employees had successfully ventilated their grievance before the respective high courts. Pertinent observations from the said decision read thus:

> 26. There are some observations on the principles of public sectors being model employers and provisions of pension being beneficial legislations[25]. We may, however, note that as per what we have opined aforesaid, the issue cannot be dealt with on a charity principle. When the legislature, in its wisdom, brings forth certain beneficial provisions in the form of Pension Regulations from a particular date and on particular terms and conditions, aspects which are excluded cannot be included in it by implication. The provisions will have to be read as they read unless there is some confusion or they are capable of another interpretation. We may also note that while framing such schemes, there is an important aspect of them being of a contributory nature and their financial implications. Such financial implications are both, for the contributors and for the State. Thus, it would be inadvisable to expand such beneficial schemes beyond their contours to extend them to employees for whom they were not meant for by the legislature.

44. Although the larger Bench in ***Shree Lal Meena*** (supra) did not expressly overrule the decision in ***Asger Ibrahim Amin*** (supra), what appears from a bare reading of the decision in ***BSES Yamuna Power Ltd. v. Sh. Ghanshyam Chand Sharma***[26] rendered by another coordinate Bench is this:

> **13.** The view in *Asger Ibrahim Amin* was disapproved and the Court held that the provisions providing for voluntary retirement would not apply retrospectively by implication. In this view, where an employee has resigned from service, there arises no question of whether he has in fact "voluntarily retired" or "resigned". The decision to resign is materially distinct from a decision to seek voluntary retirement. The decision to resign results in the legal consequences that flow from a

[25] Shashikala Devi (supra) and Asger Ibrahim Amin (supra)
[26] (2020) 3 SCC 346

> resignation under the applicable provisions. These consequences are distinct from the consequences flowing from voluntary retirement and the two may not be substituted for each other based on the length of an employee's tenure.

45. ***Asger Ibrahim Rahim*** (supra) had followed the decision in ***Sheelkumar Jain*** (supra). ***BSES Yamuna Power Ltd. v. Sh. Ghanshyam Chand Sharma*** seems to be right in holding that ***Shree Lal Meena*** (supra) disapproved ***Asger Ibrahim Rahim*** (supra). For the same reasons, once could say that ***Sheelkumar Jain*** (supra) too stands disapproved.

46. Although we would ordinarily be bound by what the larger Bench in ***Shree Lal Meena*** (supra) has ruled, one noticeable factual dissimilarity is that the employees there had resigned prior to introduction of the Pension Regulations and that is why one finds, from the following passage, one additional reason to deprive the employees of pension. It reads:

> **19.** What is most material is that the employee in this case had resigned. When the Pension Rules are applicable, and an employee resigns, the consequences are forfeiture of service, under Rule 23 of the Pension Rules. In our view, attempting to apply the Pension Rules to the respondent would be a self-defeating argument. As, suppose, the Pension Rules were applicable and the employee like the respondent was in service and sought to resign, the entire past service would be forfeited, and consequently, he would not qualify for pensionary benefits. To hold otherwise would imply that an employee resigning during the currency of the Rules would be deprived of pensionary benefits, while an employee who resigns when these Rules were not even in existence, would be given the benefit of these Rules.
>
> (underlining ours)

47. Be that as it may, the consistent trend of the decisions from ***Sanwar Mal*** (supra) to ***BSES Yamuna Power Ltd*****.** (supra) with the exception

of ***Sheelkumar Jain*** (supra) and ***Shashikala Devi*** (supra), which were decided considering the respective factual matrix, has been to hold "resignation" and "voluntary retirement" as two distinct concepts with varying consequences on severance of relationship and that substitution of the two for each other based solely on the duration of an employee's service would run counter to the intendment of statutory regulations and, therefore, is improper. We see no reason to take a different view.

48. Having distilled the legal principle from the precedents, we now consider it appropriate to examine how convincing the arguments advanced on behalf of Mullick by his learned counsel are.

49. Omission of the several previous Benches to consider the ratio of the decision in ***Anwar Ali Sarkar*** (supra) has been advanced by learned counsel for Mullick to persuade us not to follow the precedents. According to him, to group employees who resign together with employees who are dismissed or removed or terminated from service, in the light of the dicta in ***Anwar Ali Sarkar*** (supra) is violative of Article 14 of the Constitution.

50. In ***Anwar Ali Sarkar*** (supra), the *vires* of Section 5(1) of the West Bengal Special Courts Act, 1950[27] and certain notifications issued thereunder were under challenge on the ground that the same were violative of Article 14 of the Constitution. The accused were convicted by the Special Court constituted under the 1950 Act and sentenced.

[27] 1950 Act

Thereafter, the accused approached the High Court with a writ petition claiming that the Special Court had no jurisdiction to try them. The challenge succeeded before the High Court. In appeal, the Constitution Bench by a clear majority upheld the judgment of the High Court. This was perhaps the first decision by this Court where, for an enactment under challenge to pass the test of 'reasonable classification', the twin conditions of 'the classification being based on an intelligible differentia which distinguishes those that are grouped together from others' and 'that differentia must have a rational relation to the object sought to be achieved by the Act' were laid down [per Hon'ble S.R. Das, J. (as the Chief Justice then was)]. The majority held that the unbridled power conferred on the State by Section 5 to place any case before the Special Court for trial wherein the procedure prescribed is less advantageous to the accused was discriminatory and violative of Article 14.

51. We have considered the ratio of ***Anwar Ali Sarkar*** (supra) having regard to the contention urged touching Article 14 and in the light of the fervent appeal of Mullick — that the resignation he tendered, arising out of mental depression was never intended to result in a forfeiture of his right to opt for pension, should an option exercise be made available in future, and that for all intents and purposes, such resignation was nothing but an exercise to voluntarily retire from service — with the care and attention the same deserve, but regret

our inability to comprehend as to how the ratio of such decision could be of any help to Mullick.

52. Although the concepts of "resignation" and "retirement" have engaged the consideration of this Court in multiple proceedings, some of which have been referred to above, it is necessary at this stage (even at the cost of repetition) to understand the expressions "resignation" and "voluntary retirement". A public servant, who is in permanent employment, is entitled to continue in service till his retirement on superannuation. However, any such employee may sever his relationship with his employer prior to the date of superannuation by any of the two modes, i.e., resignation and voluntary retirement. Notwithstanding that both are modes bringing about an early severance of employer-employee relationship, there exists clear distinction between the two. Resignation, being a voluntary relinquishment of employment, is an implied term of employer-employee relationship. As noticed in the cited precedents, resignation can be exercised anytime while the employee is in service. But unless specified otherwise, say cases where resignation is unilateral[28], majorly, resignation is bilateral which, to be effective, requires acceptance by the employer. Nowadays, it is not uncommon to find clauses in offers of employment providing the conditions for a resignation to take effect. In changing times, resignation tendered soon after entry in service and before completion of the mandatory

[28] provisions in Articles 124 and 217 of the Constitution

period of service mentioned in the offer, does come with a price. On the other hand, an employee may seek voluntary retirement if an option is provided by the employer as a condition of service to such employee to retire from service on fulfilment of the specified terms and conditions. Any employee may, thus, offer to retire voluntarily upon completion of the requisite period of service and upon fulfilling other requirements. An offer to retire voluntarily, made by an employee, is normally accepted by the employer unless, of course, there is any debilitating factor. Further, if the employer introduces a scheme for voluntary retirement and the pre-conditions are satisfied upon receipt of any offer, the employee may be permitted to retire voluntarily in accordance therewith. Importantly, when a provision for voluntary retirement does exist, yet, an employee elects to resign, such resignation (irrespective of the length of service) cannot be treated as voluntary retirement unless, in a given case, the employee also satisfies the conditions for voluntary retirement. What is applicable in a case of voluntary retirement *ex proprio vigore* may not apply to resignation in all cases. Also, if an employee does not wish to continue in service, whatever be the reason therefor, and any provision/scheme for voluntary retirement is non-existent, the only mode open to him for severing the relationship, if he so desires, is resignation; and once he does resign, he agrees to submit to the consequences thereof as are applicable.

53. Conceptually, therefore, "resignation" and "voluntary retirement" are different. Employees resigning from service and employees retiring from service voluntarily constitute two different classes. Treating the two classes differently may not offend Article 14; and there is no justification to hold so, on facts and in the circumstances. However, creating a class within several accused, who are similarly placed, without reason is not permissible and that is precisely why Section 5 of the 1950 Act was rightly found in ***Anwar Ali Sarkar*** (supra) to be violative of Article 14. Thus, the two situations - the one before us and the other before the Constitution Bench - do not attract any comparison.

54. Insofar as Regulation 22 of the 1995 Regulations is concerned, it deals with forfeiture of service. Clubbing of resignation with dismissal, removal and termination of service leading to forfeiture of past service and consequent disentitlement to pensionary benefits *per se* do not offend Article 14. We may observe that such regulation is a signal to the employees warning them of the consequences should there be severance of relationship by any of the modes, referred to therein. While a resignation, when asked for by an employee, may be accepted upon exercise of discretion by the employer, the other modes are referable to punitive measures. It is as a matter of policy that forfeiture of past service and disentitlement to pension have been provided.

55. Whether the policy is wise or prudent is not a matter for the courts to be concerned with. We may profitably quote Prof. Wade[29]:

> "The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision.Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the court's function to look further into its merits. 'With the question whether a particular policy is wise or foolish the court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority'…"

56. It is settled law that judicial review courts should refrain from assessing the merits of policies formulated by legislative or regulatory authorities which are codified in statutes/regulations. Such codified policy may be wise or flawed, the policy may be effective in achieving the objectives or could warrant a revision by way of an improvement. However, any shortcomings in the policy do not render the regulation *ultra vires*. Courts cannot invalidate a regulation merely because in its opinion the policy is unwise or ineffective. The scrutiny has normally to be restricted to the process of policy making. As long as the policy is not beyond the scope of the regulation-making power or does not transgress the bounds of the parent enactment or is in violation of any

[29] Administrative Law, H.W.R. Wade, 6th Edition, pg.407

of the limitations imposed by the Constitution, there is little or no scope for interference by the Courts.

57. None of these vitiating factors are shown to exist in the present case.

58. In any event, we do not find Regulation 22 to be so manifestly arbitrary, so as to call for interference. Regulation 22 could have been held to violate Article 14 if Mullick, upon resigning from service, were denied dues on account of provident fund. Since by 2006, when he resigned, Mullick had not shown any inclination to opt for pension instead of provident fund, Regulation 22 did not affect him at all. To have an entitlement to pension, futuristically speaking, Mullick was required to adhere to the 1995 Regulations, which he did not.

59. Be that as it may, we have noticed that in ***Sanwar Mal*** (supra) an argument premised on Article 14 came to be rejected. We share the view expressed therein and, thus, find no merit in the contention urged on behalf of Mullick relying on ***Anwar Ali Sarkar*** (supra).

60. We record having considered the contention urged touching validity of Regulation 22 even though no formal challenge by Mullick to such regulation was laid before the High Court.

61. Next, it has been contended on behalf of Mullick that ***Shree Lal Meena*** (supra) did not have the occasion to consider ***Shashikala Devi*** (supra). This contention is plainly misconceived. There appears to be numerous references to ***Shashikala Devi*** (supra) in the order of reference dated 26th November, 2015 and the larger Bench too

referred to it in paragraph 26, extracted above. The contention being equally unmeritorious deserves outright rejection.

62. Before moving ahead, we feel it expedient to refer to ***S. K. Kool*** (supra). The factual matrix of such case is singularly singular. Following disciplinary proceedings, S.K. Kool was removed from service of the appellant bank with superannuation benefits as would be due otherwise and without disqualification from future employment. The relevant bipartite settlement was read in a manner as if it were to prevail over statutory regulations. In any event, we hold that whatever has been laid down there by the coordinate Bench turns on the facts of that case and cannot be cited as a precedent in a case where the order of punishment of removal imposed on the delinquent does not entitle him to any financial benefit.

63. The contention of the intervenors, which are in similar line as urged on behalf of Mullick, do not survive for the reasons assigned above; and, therefore, we see no reason to entertain their grievance. In any event, the bipartite settlement dated 8th March, 2024 has taken substantial care of the grievances of employees who resigned and, hence, nothing further is called for in the circumstances.

64. Adverting to the factual matrix, in the case at hand, Mullick while in service had the opportunity to opt for pension in terms of the 1995 Regulations. He, however, opted for provident fund. At the time of severance of relationship with the Bank upon acceptance of resignation, he received his own contribution of Rs.2,21,554.00 and

the Bank's contribution of Rs.5,91,987.00 towards provident fund dues. Having served the Bank for over 35 years and in service for more than a decade after introduction of the 1995 Regulations, he is presumed to have been aware of the same together with the consequences of tendering resignation instead of seeking voluntary retirement by giving a 3 months' notice on the date he tendered resignation. Presumption can also be legitimately drawn that Mullick was satisfied with whatever he received on account of provident fund dues while demitting office. True it is, Mullick was suffering from mental depression but that did not prevent him from being coherent while writing the resignation letter. It has not been the case of Mullick that he signed without being aware of its contents. Mullick seems to have had a change of mind only when options were again called for from employees who had superannuated/retired, pursuant to the bipartite settlement dated 27th April, 2010 followed by the circular dated 16th August, 2010. While it is equally true that the relevant Bank official could have appropriately advised Mullick not to resign but to seek voluntary retirement, which could have enabled him to reap the benefits of the aforesaid settlement dated 27th April, 2010 and the consequent circular dated 16th August, 2010 issued by the IBA, at the same time such official cannot also be blamed for not visualizing a future event. We conclude this chapter by holding that the terms of the bipartite settlement are binding on all the employees of the public sector banks, which were parties thereto, and such terms cannot be

read in a manner to extend its coverage dehors the statutory regulations. The issue formulated by us, thus, stands answered in favour of the Bank and against the appellant.

65. For all the reasons aforesaid, Mullick must be held to have resigned from service and not retired voluntarily so as to enable him secure the benefit of a further opportunity to opt for pension in terms of the circular dated 16th August, 2010. Relief that the Single Judge granted to Mullick based on consideration of the decisions in ***S.K. Kool*** (supra) and ***Shashikala Devi*** (supra) was correctly set at naught by the Division Bench *vide* direction in (A) extracted at the beginning of this judgment, which we hereby affirm.

66. However, the lead appeal tasks us to consider the validity of the other directions of the Division Bench as in (B), (C) and (D), extracted supra, which are impugned before us. ***Mallikarjuna Rao v. State of Andhra Pradesh***[30], ***V.K. Sood v. Department of Civil Aviation***[31] and ***State of Himachal Pradesh v. Satpal Saini***[32] are some decisions of this Court which have a material bearing in this connection.

67. It is elementary but requires to be restated that the power under Article 226 of the Constitution cannot be exercised by a high court to direct the legislature/executive to enact a law (primary or subordinate) or frame a regulation/bye-law. These are executive functions which are required to be performed based on policy decisions taken at the

[30] (1990) 2 SCC 707
[31] 1993 Supp (3) SCC 9
[32] (2017) 11 SCC 42

appropriate level. The jurisdiction of a high court is limited to the extent of pointing out why a law, in the given circumstances, is necessary for regulating the affairs of the public/society and/or to remedy a particular mischief that is noticed in course of proceedings; but in such a case too, it is only a nudge in the form of a request that could be made to the executive to consider the desirability of enacting/framing such a law or to amend an existing law.

68. Bearing in mind the above well-settled principle of law, it is now time to examine the directions [(B) to (D)] given by the Division Bench of the High Court. Although the Division Bench required the Board of Directors of the Bank to 'consider' an amendment to Regulation 22 of the 1995 Regulations in view of the circular of the IBA dated 30th June, 2015, learned counsel for the Bank is right in his submission that viewed in the light of stipulation of a timeline and the other directions for determining whether resignation tendered by Mullick could be treated as voluntary retirement and to process his claim for pension upon such determination, user of the word 'consider' is really a mandate on the Bank to amend Regulation 22 of the 1995 Regulations. No such mandate could have been issued and we hold that the Division Bench overstepped its bounds by directing the Board of Directors of the Bank to consider amending Regulation 22 even when the *vires* of such a regulation was not under challenge in Mullick's writ petition.

CONCLUSION

69. The connected appeal of Mullick, thus, stands dismissed.

70. While direction (A) is affirmed, the directions given by the Division Bench [(B) to (D)] being the operative part of the impugned order stand set aside. The lead appeal is partly allowed and shall stand disposed of with directions as follows.

RELIEF

71. We appreciate Mullick's candour in not continuing in service despite his mentally depressed state of mind. Being the head cashier and dealing with public money, of which the Bank was the custodian, Mullick by tendering resignation averted a crisis situation which could have ensued had he, because of mental depression, mishandled cash and failed to perform his duty as before. Since Mullick had served the Bank without blemish for more than 35 years and is now a septuagenarian, we consider it appropriate to extend some relief to him in exercise of our power under Article 142 of the Constitution of the India to assist him survive in the winter years of his life with a fair measure of dignity.

72. The Bank has referred to clause 37 of the bipartite settlement dated 8th March, 2024. Though Mullick may not have exercised option in terms thereof, we grant him a fortnight's time more to opt for pension as a very special case. Opting for pension would mean that Mullick would abide by all the terms and conditions of such settlement. If Mullick returns the sum received by him on account of provident fund

together with the applicable rate of interest within the time stipulated by the Bank, he will be entitled to pension at such rate and on such terms as are provided in the settlement.

73. However, in the unlikely event of Mullick not being eligible in terms of the settlement to receive pension or he being unable to refund the sum received by him on account of provident fund together with the applicable rate of interest, as the case may be, he may instead request for financial relief within a fortnight. If such a request is received, the Bank shall, as a model employer, proceed to pay to Mullick relief in a sum of Rs.5,00,000/- (Rupees five lakh) only within two months from date of its receipt. This particular grant of financial relief is, however, not to be treated as a precedent.

74. We, therefore, dispose of the lead appeal on the aforesaid terms.

75. The applications filed by the intervenors stand dismissed.

76. Other connected applications, if any, stand closed.

.....J.
(DIPANKAR DATTA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
JULY 22, 2025.