



**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 375 OF 2020**

**UCO BANK & ORS.**

**... APPELLANTS**

**VERSUS**

**SK SHRIVASTAVA**

**... RESPONDENT**

**WITH**

**CIVIL APPEAL NO. 376 OF 2020**

**UCO BANK & ORS.**

**... APPELLANTS**

**VERSUS**

**SK SHRIVASTAVA & ORS.**

**... RESPONDENTS**

**J U D G M E N T**

**J.K. MAHESHWARI, J.**

**1.** The Civil Appeal No. 375 of 2020 is arising out of the judgment dated 07.01.2019 in Writ Appeal No. 824 of 2018 by the High Court of Chhattisgarh, Bilaspur (*hereinafter 'High Court'*) preferred against the judgment dated 28.09.2018 in WP (S) No. 1620 of 2012, wherein the direction for grant of terminal benefits to

Respondent No. 1 was issued. Learned Single Judge was of the view that after completion of the notice period of three months as specified in the notice for voluntary retirement or from the date of stopping to attend the service, the Respondent be treated retired voluntarily. Since he stood retired prior to institution of the disciplinary proceedings, therefore, he is entitled to all consequential benefits as per Rules governing the field. The Division Bench reaffirmed the finding of the learned Single Judge *inter alia* observing that since option of refusal of notice for voluntary retirement was not exercised by the Appellant-Bank before the expiry of notice period i.e. 04.01.2011 or even prior to 16.05.2011 i.e. the date since when the employee decided to sever the master servant relationship, therefore, communication made subsequently to refuse the request of voluntary retirement cannot be given retrospective effect to undo an act which was deemed to have been done.

**2.** In Civil Appeal No. 376 of 2020, the judgment dated 12.07.2019 in Writ Appeal No. 321 of 2019 is under challenge, whereby, the judgment dated 24.04.2019 passed in WP (S) No. 5109

of 2012 was assailed. Learned Single Judge while allowing the writ petition opined that the employee stood retired with effect from the date of severance of master servant relationship i.e. 16.05.2011, therefore, the chargesheet issued on 05.03.2012 after retirement is liable to be quashed. In view of the judgment dated 28.09.2018 delivered in WP (S) No. 1620 of 2012 which was affirmed by the Division Bench, the learned Single Judge quashed the chargesheet and the consequential order of dismissal along with costs of Rs. 25,000/-.

**3.** In the present two appeals filed by the Appellant-bank, the Respondent herein was the petitioner before High Court. The former writ petition relates to grant of terminal benefits to him and the latter relates to challenge to chargesheet and his dismissal from service. Consequent upon the decision in the previous writ petition, the latter writ petition was allowed. Since both the appeals have been filed in relation to the same employee, therefore, both the Civil Appeals are heard analogously and being decided by this common judgment.

4. The issue pertaining to the voluntary retirement is governed by the UCO Bank (Employees') Pension Regulations, 1995 (*hereinafter referred to as 'Pension Regulation'*) as stood on the date on which notice for voluntary retirement was submitted by the Respondent. The service conditions of the employee are governed by the UCO Bank (Officers') Service Regulations, 1979 (*hereinafter referred to as 'Service Regulation'*) applicable for termination or discontinuation from employment of the Bank. The said Regulation was later amended on 30.04.2011.

#### **FACTUAL MATRIX**

5. The facts unveiling the controversy are that the Respondent was appointed as Clerk-cum-Godown Keeper in UCO Bank on 10.09.1983 and promoted as an Assistant Manager with effect from 01.01.2000. He was further promoted as Manager w.e.f. 26.04.2007. In July 2010, while working as Branch Manager at Raipur Branch, some suspicious transactions in the account of M/s. Bhanu Road Carriers and M/s. Progressive Exim Ltd. came to the knowledge of the Appellant. Internal correspondence was made from Head Office to Zonal Office regarding the same. In the

meantime, Respondent sent a notice of voluntary retirement on 04.10.2010 to the General Manager, Kolkata. In response, Zonal Office asked for fresh application under the Pension Regulation. The Head Office also sought information regarding vigilance, non-vigilance or court case and an undertaking to the effect that he would not accept any commercial employment for two years from the date of acceptance of his voluntary retirement.

**6.** In the interregnum, the Zonal Office issued a show-cause notice dated 11.11.2010 and asked explanation regarding alleged transactions and suspicious entries in the accounts as referred above. An internal communication between the Head Office and the Zonal Office dated 11.12.2010 indicates that voluntary retirement of Respondent was not considered because of proposed changes in Pension Regulation, therefore, the Respondent was advised to continue in service, and a communication from Zonal Office to the Chief Manager, UCO Bank, Bilaspur was made on 20.12.2010 to that effect. The Head Office wrote another letter to Zonal Office on 06.04.2011 stating that since show cause notice has been issued on 11.11.2010 to the Respondent, therefore his request for voluntary

retirement cannot be considered, and the same was communicated to the branch office.

**7.** On 09.05.2011, reply to the show cause notice was submitted, and in the meantime, an undertaking was furnished by the Respondent on 11.04.2011 that he shall not take any commercial employment. Since the period specified in the notice for voluntary retirement had elapsed, hence, after writing a letter dated 14.05.2011, Respondent stopped working with the bank w.e.f. 16.05.2011. Later, *vide* communication dated 29.06.2011 it was informed to the Respondent by post sent from Bilaspur Branch that his request for voluntary retirement is not being accepted. As per information supplied by the Postal Department, the said letter was never delivered to the Respondent and the High Court has also taken note of the said fact.

**8.** After about eight months from the date when he severed his employment with the Appellant, the Respondent was charge-sheeted on 05.03.2012 alleging the suspicious transactions as mentioned hereinabove. Challenging the non-acceptance of voluntary retirement and consequent initiation of inquiry and dismissal, the

Respondent filed the respective writ petitions, which were allowed by the learned Single Judge and confirmed in writ appeal by the High Court *vide* impugned order. Hence, the present two appeals.

9. In the course of hearing, both the parties have placed reliance on the judgments of this Court in ***UCO Bank v. Rajinder Lal Capoor***<sup>1</sup> (hereinafter '***R.L. Capoor - I***'), ***UCO Bank v. Rajinder Lal Capoor***<sup>2</sup> (hereinafter '***R.L. Capoor - II***') and the judgment of Three-Judge Bench in ***Canara Bank v. D.R.P. Sundharam***<sup>3</sup>. All the said judgments deal with Regulation 20(3)(iii) of the Service Regulation, consequential effect of show cause notice and meaning of deemed pendency. Considering the peculiar facts of the case and that the Respondent himself was appearing in person as well as looking to the questions of law as involved, Mr. Gaurav Agrawal, learned senior counsel, was appointed as *amicus curiae* to assist the Court, who agreed to assist us in examining the legal issues involved in these two appeals.

### **ARGUMENTS ADVANCED BY THE PARTIES**

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1 (2007) 6 SCC 694

2 (2008) 5 SCC 257

3 (2016) 12 SCC 724

**10.** Learned counsel for the Appellant, the Respondent-in-person and learned *amicus curiae* have advanced their arguments and were heard at length. Learned counsel for the Appellant assailed the judgment of the High Court placing reliance on Regulation 20(3)(ii) of the Service Regulation and contended that in case a notice to show cause for institution of disciplinary action has been issued, it would amount to pendency of the disciplinary proceedings, and during such pendency, the request for voluntary retirement cannot be accepted. It is further argued that the deeming fiction as contained in Regulation 29(1) and (2) of the Pension Regulation may not be applicable on elapse of three months' notice period as specified therein, in case the disciplinary proceeding is pending as per Regulation 20(3)(ii) of the Service Regulation. In support of his contentions, reliance has been placed upon the aforementioned judgments.

**11.** *Per contra*, the Respondent-in-person, submitted that while allowing the writ petition, the High Court recorded the reasons in detail indicating that the voluntary retirement was deemed to have been accepted w.e.f. the date of expiry of three months' notice

period or from the date of cessation of employment i.e., 16.05.2011. It was contended that the show cause notice dated 11.11.2010 does not indicate about initiation of disciplinary proceedings, as required under Regulation 20(3)(ii) of the Service Regulation. It is also contended, in case the disciplinary proceedings is not initiated prior to retirement, dismissal from service consequent to such proceedings is arbitrary and without any sanction under the law, and as such, the findings of the High Court do not warrant interference. In view of the above submissions, it was prayed that the Appeals preferred by the Bank may be dismissed with direction to pay the post retiral and pensionary benefits within time frame along with interest.

**12.** Mr. Gaurav Agrawal, learned senior counsel and *amicus*, has placed all the facts in detail in his brief note of submissions and argued that Regulation 29 of the Pension Regulation would apply for voluntary retirement on completion of 20 years of service in case the notice to that effect proposing a date of not less than three months has been given in writing to the appointing authority. As per the proviso to Regulation 29(2), such notice shall become

effective if not refused during the notice period. He submits that Clauses (i), (ii) and (iii) of Regulation 20(3) of the Service Regulation operate in different spheres and the judgments referred hereinabove only deal with the contingency of Regulation 20(3)(iii), therefore, Regulation 20(3)(ii) of the Service Regulation, particularly in facts of the present case, requires independent consideration. As per his contention, show cause notice dated 11.11.2010 does not indicate the institution of disciplinary proceedings and satisfy the requirement contemplated in Regulation 20(3)(ii) of the Service Regulation. It was also stated that nothing has been placed on record to indicate that the competent authority fulfilling the requirement of clause 20(3)(ii) of Service Regulation and Clause 29(2) of Pension Regulation has passed any order refusing voluntary retirement within the notice period. Lastly, it was submitted that the judgment of the High Court is just, equitable and in accordance with law, therefore, warrants no interference.

**13.** It is pointed out, the documents dated 28.07.2010 (communication of Vigilance Department advising to lodge FIR) and 12.08.2010 (a draft show cause notice) placed before this Court

along with additional affidavit were not filed with counter affidavit before the High Court. The communication of these two documents and internal correspondences of the Head Office to the Zonal Office dated 11.12.2010, 20.12.2010 and 06.04.2011 to the Respondent was also not averred in counter affidavit.

**14.** Learned *amicus* has drawn a distinction between “*notice to retire*” and “*request seeking permission to retire*” placing reliance on the judgment of this Court in ***State of Haryana & Ors. v. S.K. Singhal***<sup>4</sup>. It is his contention that any refusal to accept notice within the period specified in the notice has not been placed before the Court. Therefore, in terms of proviso of Regulation 29(2) of the Pension Regulations, the voluntary retirement is deemed to come into force immediately after expiry of the date as specified in the notice. In support, reliance was also placed on ***Tek Chand v. Dile Ram***<sup>5</sup>.

**15.** In the facts of both these Appeals, the following four questions falls for our consideration - **(a)** *Under Regulation 29 of Pension Regulation, a notice of voluntary retirement if not refused within the*

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4 (1999) 4 SCC 293

5 (2001) 3 SCC 290

*prescribed period of three months or before the date as specified in the notice, whether such notice would be deemed to be accepted on expiry of such period? (b) Whether issuance of show cause notice dated 11.11.2010 by the Appellant may fall within the purview of institution of the disciplinary proceedings and such proceedings be treated as pending in terms of Regulation 20(3)(i) & (ii) of the Service Regulation? (c) Whether further action taken by the Appellant in issuing chargesheet to conduct an inquiry and pass consequential order of dismissal from service would withstand the scrutiny of law? (d) In the facts and looking to the legal position discussed, whether the judgments of the High Court warrant interference?*

### **ANAYSIS**

**16.** On appraisal of the rival contentions and to deal with the questions posed above, for ready reference, it is necessary to first refer the relevant provisions of the Pension Regulation applicable as on the date, governing the issue of voluntary retirement. Regulation 29 of Chapter V of the Pension Regulation is relevant therefore reproduced as under:

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

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

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

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

**(2) The notice of voluntary retirement given under sub-regulation (1) shall require acceptance by the appointing authority;**

**Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.”**

**(emphasis supplied)**

**17.** Upon reading, it is quite clear, if an employee on or after 1<sup>st</sup> day of November 1993 completes twenty years of qualifying service, and furnishes a notice of not less than three months to the appointing

authority, he may retire voluntarily. Provisos of Regulation 29(1) of the Pension Regulation deal with the contingencies which are not relevant for the present case. Regulation 29(2) makes it further clear that notice for voluntary retirement is required to be given as per Regulation 29(1), which is required to be accepted by the appointing authority. Regulation 29(2) of Pension Regulation applies subject to proviso to the said sub-regulation, whereby in case the appointing authority does not refuse the permission of voluntary retirement before the period specified in the notice, the voluntary retirement would be effective *ipso facto* from the date specified in the notice. Therefore, in Regulation 29(2), voluntary retirement is qualified by an act of the appointing authority to refuse within the notice period. Otherwise, the notice of voluntary retirement shall be deemed to be accepted from the date or period as indicated in the notice.

**18.** In view of the discussions made regarding provisions contained in Pension Regulation and to understand the import of the said provision, we may take guidance from judgments delivered

by this Court dealing with *pari materia* provisions and interpretation thereto.

**19.** In the case of ***Dinesh Chandra Sangma Vs. State of Assam & Ors.***<sup>6</sup> a Three-Judge bench of this Court was having an occasion to deal with a similar issue of voluntary retirement in the context of Fundamental Rule 56 (c), wherein this Court observed as follows -

*7. Before we proceed further we may read F. Rule 56 as amended:*

*“F. Rule 56. (a) The date of compulsory retirement of a Government servant is the date on which he attains the age of 55 years. He may be retained in service after this age with sanction of the State Government on public grounds which must be recorded in writing, and proposals for the retention of a Government servant in service after this age should not be made except in very special circumstances.*

*(b) Notwithstanding anything contained in these rules the appropriate authority may, if he is of the opinion that it is in the public interest to do so, retire government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice, after he has attained fifty years of age or has completed 25 years of service, whichever is earlier.*

***(c) Any government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years or has completed 25 years of service, whichever is earlier.”***

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6 (1977) 4 SCC 441

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**8. ....While the Government reserves its right to compulsorily retire a government servant, even against his wish, there is a *corresponding right of the government servant under F. Rule 56(c) to voluntarily retire from service by giving the Government three months' notice in writing. There is no question of acceptance of the request for voluntary retirement by the Government when the government servant exercises his right under F. Rule 56 (c). Mr Niren De is therefore right in conceding this position.***

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*17. The High Court committed an error of law holding that consent of the Government was necessary to give legal effect to the voluntary retirement of the Appellant under F. Rule 56(c). Since the conditions of F. Rule 56(c) are fulfilled in the instant case, the Appellant must be held to have lawfully retired as notified by him with effect from August 2, 1976.*

**20.** By the said judgment it was made clear that, as per relevant rules, to give effect to the voluntary retirement, the consent of the Government was not necessary since the notice given by employee reflects the intention to retire voluntarily from the date so specified in the notice. Nonetheless, it appears that the said provision did not contain any option on the part of the government to refuse the request for voluntary retirement.

**21.** In another judgment of three-Judge Bench in **B.J. Shelat Vs. State of Gujarat and Ors.**<sup>7</sup>, wherein this Court dealt with the question of jurisdiction of the authority to take a disciplinary action and was observed as thus: -

*“6. We will proceed to consider the question of the jurisdiction of the authority to take disciplinary action against the Appellant after his retirement. It may be recalled that the Appellant gave a notice intimating his intention to retire on July 17, 1973 stating that he intended to retire on reaching the age of 55 years on December 3, 1973. He attained the age of 55 years on December 3, 1973 and it is common ground that the notice of suspension was issued by the High Court only on December 11, 1973. But before December 3, 1973 it is admitted that a show-cause notice was issued on November 23, 1973 by the Chief City Magistrate on the directions of the High Court calling upon the petitioner to submit his explanation and the Appellant submitted his explanation on November 26, 1973.*

*7. Rule 161 of the Bombay Civil Services Rules provides for the retirement of Government servants before attaining the age of superannuation. Rule 161(1)(aa) provides—*

*“Notwithstanding anything contained in clause (a):*

*(1) An appointing authority shall, if he is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant to whom clause (a) applies by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice:*

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*Sub-rule (2)(ii) is as follows:*

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7 (1978) 2 SCC 202

*“Any Government servant to whom clause (a) applies may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service... and in any other case, after he has attained the age of 55 years.”*

*There is no dispute that the Rule applicable is Rule 161(2) (ii) and the Appellant is entitled to retire by giving a notice of not less than 3 months after he has attained the age of 55 years. Under Rule 161(1)(aa)(1) the appointing authority has an absolute right to retire any Government servant to whom clause (a) applies in public interest by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice. But the Government servant has no such absolute right. A right is conferred on the Government servant under Rule 161(2)(ii) to retire by giving not less than three months' notice on his attaining the prescribed age. Such a right is subject to the proviso which is incorporated to the sub-section which reads as follows:*

***“Provided that it shall be open to the appointing authority to withhold permission to retire to a Government servant who is under suspension, or against whom departmental proceedings are pending or contemplated, and who seeks to retire under this sub-clause.”***

*But for the proviso a Government servant would be at liberty to retire by giving not less than three months' notice in writing to the appointing authority on attaining the prescribed age.”*

**22.** In the above case, the judgment of **Dinesh Chandra Sangma**

(Supra) was relied upon and applying the law as prevalent, the

Court observed as thus:

***“8. .... In the case before us it is incumbent on the appointing authority to withhold permission to retire on one of the conditions mentioned in the proviso. We are of the view that the proviso contemplates a positive action by the appointing authority. The words “It shall be***

***open to the appointing authority to withhold permission” would indicate that the appointing authority has got an option to withhold permission and that could be exercised by communicating its intention to withhold permission to the Government servant. The appointing authority may have considered the question and might not have taken a decision either way or after considering the facts of the case might have come to the conclusion that it is better to allow the Government servant to retire than take any action against him. For the proviso to become operative it is necessary that the Government should not only take a decision but communicate it to the Government servant.”***

**23.** The Court also interpreted the meaning of the word ‘withhold’ in case the disciplinary proceedings are pending and a person applied for voluntary retirement, wherein following was observed :-

*“9. Mr Patel next referred us to the meaning of the word “withhold” in Webster’s Third New International Dictionary which is given as “hold back” and submitted that the permission should be deemed to have been withheld if it is not communicated. We are not able to read the meaning of the word “withhold” as indicating that in the absence of a communication it must be understood as the permission having been withheld.*

*10. It will be useful to refer to the analogous provision in the Fundamental Rules issued by the Government of India applicable to the Central Government servants. Fundamental Rule 56(a) provides that except as otherwise provided in this Rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. Fundamental Rule 56(j) is similar to Rule 161(aa)(1) of the Bombay Civil Services Rules conferring an absolute right*

*on the appropriate authority to retire a Government servant by giving not less than three months' notice. Under Fundamental Rule 56(k) the Government servant is entitled to retire from service after he has attained the age of fifty-five years by giving notice of not less than three months in writing to the appropriate authority on attaining the age specified. But proviso (b) to sub-rule 56(k) states that it is open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause. Thus under the Fundamental Rules issued by the Government of India also the right to the Government servant to retire is not an absolute right but is subject to the proviso whereunder the appropriate authority may withhold permission to a Government servant under suspension. **On a consideration to Rule 161(2)(ii) and the proviso, we are satisfied that it is incumbent on the Government to communicate to the Government servant its decision to withhold permission to retire on one to the grounds specified in the proviso.***

***11. In the view we have taken that the appointing authority has no jurisdiction to take disciplinary proceedings against a Government servant who had effectively retired, the question as to whether the High Court was right in holding that the disciplinary authority had sufficient grounds for dismissing the Appellant does not arise.***

*.....As already stated, as we have come to the conclusion that the disciplinary action cannot be taken after the date of his retirement, we refrain from expressing any opinion on the correctness of the decision taken by the appointing authority."*

In the said context, it is evident that until the appointing authority withholds the permission to let an employee voluntarily retire, pendency of disciplinary proceedings against such Government

servant has no adverse consequence. Therefore, withholding permission in terms of the rules was found to be a prerequisite.

**24.** Both the above referred judgments have been further cited with approval in the case of **Union of India and Ors. v. Sayed Muzaffar Mir**<sup>8</sup> and the Court held as thus: -

*“3.The learned Additional Solicitor General, Shri Ahmed appearing for the Appellants, has contended that the right of premature retirement conferred by the aforesaid provision could be denied to a railway servant in case he be under suspension, as was the Respondent at the relevant time. This is what finds place in the proviso to the aforesaid provision. The Additional Solicitor General also seeks to place reliance on what has been stated in Rule 1801(d) which starts with non-obstante clause and states that the competent authority may require a railway servant under suspension to continue his service beyond the date of his retirement in which case he shall not be permitted by that authority to retire from service and shall be retained in service till such time as required by that authority. Relying on these provisions the contention advanced is that though the Respondent had sought premature retirement by his letter dated 22-7-1985 and though the three months' period had expired on 21-10-1985, the Railways were within the rights not to permit the premature retirement because of the suspension of the Respondent at the relevant time, which had come to be ordered in the course of a disciplinary proceeding which was then pending against the Respondent.*

**4. There are two answers to this submission. The first is that both the provisions relied upon by the learned counsel would require, according to us,**

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<sup>8</sup> 1995 Supp (1) SCC 76

*passing of appropriate order, when the government servant is under suspension (as was the Respondent), either of withholding permission to retire or retaining of the incumbent in service. It is an admitted fact that no such order had been passed in the present case. So, despite the right given to the appropriate/competent authority in this regard, the same is of no avail in the present case as the right had not come to be exercised. We do not know the reason(s) thereof. May be, for some reason the authority concerned thought that it would be better to see off the Respondent by allowing him to retire.*

5. The second aspect of the matter is that it has been held by a three-Judge Bench of this Court in *Dinesh Chandra Sangma v. State of Assam* [(1977) 4 SCC 441 : 1978 SCC (L&S) 7] , which has dealt with a *pari materia* provision finding place in Rule 56(c) of the Fundamental Rules, that where the government servant seeks premature retirement the same does not require any acceptance and comes into effect on the completion of the notice period. This decision was followed by another three-Judge Bench in *B.J. Shelat v. State of Gujarat* [(1978) 2 SCC 202 : 1978 SCC (L&S) 208].

6. The period of notice in the present case having expired on 21-10-1985, and the first order of removal having been passed on 4-11-1985, we hold that the Tribunal had rightly come to the conclusion that the order of removal was *non est* in the eye of law.”

**25.** In another case of **S.K. Singhal** (Supra), this Court was having an occasion to consider the *pari materia* provision of Punjab Civil Services Rules wherein the rule contemplates about “notice to retire” and “not a request seeking permission to retire”. In the said

case, this Court has relied upon the above referred three judgments and held as thus: -

“13. Thus, from the aforesaid three decisions it is clear that if the right to voluntarily retire is conferred in absolute terms as in *Dinesh Chandra Sangma case* [(1977) 4 SCC 441 : 1978 SCC (L&S) 7] by the relevant rules and there is no provision in the rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in *B.J. Shelat case* [(1978) 2 SCC 202 : 1978 SCC (L&S) 208] and as in *Sayed Muzaffar Mir case* [1995 Supp (1) SCC 76 : 1995 SCC (L&S) 256] **the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz., in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed is that the authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in *B.J. Shelat case* [(1978) 2 SCC 202 : 1978 SCC (L&S) 208] and in *Sayed Muzaffar Mir case* [1995 Supp (1) SCC 76 : 1995 SCC (L&S) 256] before the expiry of the notice period.** Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission.”

14. Before referring to the second category of cases where the rules require a positive acceptance of the notice of voluntary retirement and communication thereof, it is necessary to refer to the decision of this Court in *Baljit Singh (Dr) v. State of Haryana* [(1997) 1 SCC 754 : 1997

SCC (L&S) 313] strongly relied upon by the learned counsel for the Appellants and to Power Finance Corpn. Ltd. v. Pramod Kumar Bhatia [(1997) 4 SCC 280 : 1997 SCC (L&S) 941] . The former case arose under Rule 5.32(B) of the Punjab Civil Services Rules. That rule extracted earlier contains an express provision in the proviso to sub-rule (2) that the retirement takes effect automatically if refusal is not communicated within 3 months. In that case, when the employee gave notice for voluntary retirement on 20-9-1993, criminal cases were pending against him. After expiry of 3 months, on 25-2-1994, the competent authority declined to accept the notice. A two-Judge Bench of this Court, however, held that the voluntary retirement did not come about automatically on the expiry of the notice period but that it could take effect only upon acceptance of the notice by the Government and that the acceptance must also be communicated and till then the jural relationship of master and servant continues. This Court referred only to the decision of the two-Judge Bench in Sayed Muzaffar Mir case [1995 Supp (1) SCC 76 : 1995 SCC (L&S) 256] and stated that that case was to be confined to its own facts. **The two-Judge Bench of this Court in Baljit Singh case [(1997) 1 SCC 754 : 1997 SCC (L&S) 313] did not notice that there were two three-Judge Bench cases in Dinesh Chandra Sangma [(1977) 4 SCC 441 : 1978 SCC (L&S) 7] and Shelat [(1978) 2 SCC 202 : 1978 SCC (L&S) 208] taking the view under similar rules that a positive order was to be passed within the notice period withholding permission to retire and that the said order was also to be communicated to the employee during the said period.** By stating that an order of acceptance of the notice was necessary and that the said acceptance must be communicated to the employee and till that was done the jural relationship continued and there was no automatic snapping thereof on the expiry of 3 months' period, the two-Judge Bench, in our view, has gone contrary to the two three-Judge Bench cases which were not brought to its notice. In the above

*circumstances, we follow the two three-Judge Bench cases for deciding the case before us.”*

**26.** After taking clue from the above judgments, if we look into the language of Regulation 29(2) of the Pension Regulation which deals with the voluntary retirement, acceptance of the notice by the appointing authority is subject to compliance of proviso, whereby refusal to let the employee retire voluntarily ought to be ordered before expiry of the notice period, and communicate, otherwise, in terms of proviso to Regulation 29(2), voluntary retirement shall be deemed to be effective on lapse of the notice period. Therefore, a positive act of passing an order of refusal is required to be undertaken by the appointing authority.

**27.** In the judgment of **Tek Chand** (Supra) decided by another Three-Judge Bench, this Court has considered all the above referred judgments and in the context of the language used in the proviso to sub-rule (2) of Rule 48-A of the Central Services Pension Rules, 1972 dealing with the voluntary retirement, the Court in paragraphs 33 and 35, held as thus: -

*“33. It is clear from sub-rule (2) of the Rule that the appointing authority is required to accept the notice of voluntary retirement given under sub-rule (1). It is open to*

the appointing authority to refuse also, on whatever grounds available to it, but such refusal has to be before the expiry of the period specified in the notice. The proviso to sub-rule (2) is clear and certain in its terms. If the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement sought for becomes effective from the date of expiry of the said period. In this case, admittedly, the appointing authority did not refuse to grant the permission for retirement to Nikka Ram before the expiry of the period specified in the notice dated 5-12-1994. The learned Senior Counsel for the Respondent argued that the acceptance of voluntary retirement by appointing authority in all cases is mandatory. In the absence of such express acceptance the government servant continues to be in service. In support of this submission, he drew our attention to Rule 56(k) of the Fundamental Rules. He also submitted that acceptance may be on a later date, that is, even after the expiry of the period specified in the notice and the retirement could be effective from the date specified in the notice. Since the proviso to sub-rule (2) of Rule 48-A is clear in itself and the said Rule 48-A is self-contained, in our opinion, it is unnecessary to look to other provisions, more so in the light of law laid down by this Court. **An argument that acceptance can be even long after the date of the expiry of the period specified in the notice and that the voluntary retirement may become effective from the date specified in the notice, will lead to anomalous situation.** Take a case, if an application for voluntary retirement is accepted few years later from the date specified in the notice and voluntary retirement becomes operative from the date of expiry of the notice period itself, what would be the position or status of such a government servant during the period from the date of expiry of the notice period up to the date of acceptance of the voluntary retirement by the appointing authority? One either continues in service or does not continue in service. It cannot be both that the voluntary retirement could be

effective from the date of expiry of the period mentioned in the notice and still a government servant could continue in service till the voluntary retirement is accepted. The proviso to sub-rule (2) of Rule 48-A of the Rules does not admit such situation.

35. In our view, this judgment fully supports the contention urged on behalf of the Appellant in this regard. **In this judgment, it is observed that there are three categories of rules relating to seeking of voluntary retirement after notice. In the first category, voluntary retirement automatically comes into force on expiry of notice period. In the second category also, retirement comes into force unless an order is passed during notice period withholding permission to retire and in the third category voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. In such a case, refusal of permission can be communicated even after the expiry of the notice period. It all depends upon the relevant rules. In the case decided, the relevant Rule required acceptance of notice by appointing authority and the proviso to the Rule further laid down that retirement shall come into force automatically if the appointing authority did not refuse permission during the notice period. Refusal was not communicated to the Respondent during the notice period and the Court held that voluntary retirement came into force on expiry of the notice period and subsequent order conveyed to him that he could not be deemed to have voluntarily retired had no effect. The present case is almost identical to the one decided by this Court in the aforesaid decision.”**

**28.** In the above mentioned precedents, the *pari materia* provisions dealing with the contingency of voluntary retirement have been

dealt with and it was made clear that subject to applicable law, the request if not refused within the period specified in the notice or withheld, the deemed approval of voluntary retirement would be effective on expiry of notice period.

**29.** There may be three contingencies for the employees with respect of retirement. *First* is on attaining the age of superannuation; *second* would be a situation of compulsory retirement in public interest and *third* is where an employee sought retirement voluntarily indicating his intention to cease the master-servant relationship. In the third contingency, subject to applicable regulations or rules, where an employee voluntarily ceases the employment and indicates his intention in the notice of voluntary retirement, until it is refused or withheld by an order within the notice period, the intention of the employee would become effective from the date as specified by him. Meaning thereby, if an employee voluntarily wishes to sever his relationship with employer, and by virtue of rule, the prescription is not followed, i.e., requiring the authorities to indicate their intention to refuse the request, as per

deemed approval clause, in our opinion, the request becomes effective ipso facto.

**30.** In the case at hand, the notice of three months indicating intention to retire voluntarily was given on 04.10.2010 and the period was supposed to expire on 04.01.2011, to which refusal was not ordered within the notice period. The non-approval communicated on 29.06.2011, after expiry of the notice period and cessation of work *vide* notice dated 14.05.2011 with effect from 16.05.2011, is of no avail to the bank.

**31.** Reverting to the arguments as advanced by the Appellant, relying upon Regulation 20(3)(ii) of Service Regulation, it sets forth an embargo upon an officer against *leaving or discontinuing or resigning* from service of bank without giving a notice in writing. The said provision is relevant, therefore, reproduced for ready reference as under: -

***“20. Termination of Service. –***

(1) \*\*\*\* \*\*

(2) \*\*\*\* \*\*

(3) (i) *An officer against whom disciplinary proceedings are pending shall not leave/discontinue or resign from his service in the bank without the prior approval in writing of*

*competent authority and any notice or resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the Competent Authority.*

*(ii) Disciplinary proceedings shall deemed to be pending against any employee for the purpose of this regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings shall not be instituted against him and will be deemed to be pending until final orders are passed by the Competent Authority.*

*(iii) The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contributions to CPF.”*

**32.** Upon reading, it is discernable that if disciplinary proceedings against an officer are pending and he wishes to leave/discontinue or resign, he may be permitted to do so by prior approval of the competent authority in writing. Such notice, if any, given by the officer before or during the disciplinary proceedings, shall not be given effect unless accepted by the competent authority. The pendency of the disciplinary proceedings would include suspension or issuance of a show-cause notice for institution of the disciplinary

proceedings. Regulation 20(3)(iii) of the Service Regulation applies where the disciplinary proceedings were initiated prior to attaining the age of superannuation, and prescribes the recourse to the bank after attaining the age of superannuation, which is not of much relevance in the facts of this case.

**33.** The argument as advanced to apply Regulation 20(3)(i) and 20(3)(ii) of the Service Regulation may have some relevance as it imposes embargo upon an officer against *'leaving or discontinuing or resigning'* from service without the prior approval of the authority if disciplinary proceedings are pending. It also provides what would mean by pendency of disciplinary proceedings. As discussed, Regulation 29 of Pension Regulation governs the voluntary retirement and its acceptance until refused by the appointing authority within notice period, otherwise it would become effective on lapse of the time specified in the notice.

**34.** Looking at the provision of Regulation 20(3)(i), (ii), (iii) of Service Regulations and Regulation 29(1) and (2) of the Pension Regulation, it ought to be read in tandem harmoniously. Regulation 20(3)(i) & (ii) of the Service Regulation deals with cessation of

service and when it would not affect the pendency of disciplinary proceedings. It puts an embargo only in two specific contingencies, *first*, where the officer is placed under suspension, *second*, where a show-cause notice has been issued for institution of disciplinary proceedings. In either of the situation, an officer would require prior approval of the competent authority. Indeed it is true that voluntary retirement is also a mode to '*leave or discontinue*' service, therefore to such extent, Regulation 20(3)(i) & (ii) may have relevance. Nonetheless, voluntary retirement is not a mere act of leaving or discontinuing, rather, a distinct right of an employee that is available on completion of the requisite number of years of service, etc. For exercising the option of voluntary retirement, Regulation 29 of the Pension Regulation is the main provision. Given the situation, without considering both provisions harmoniously, otherwise, this leads to an anomalous situation. We say so because as per intent of Regulation 20(3)(i) & (ii), the employee cannot leave without approval of the competent authority pending the disciplinary proceedings irrespective of the fact that he has tendered notice to that effect. However, on literal reading of proviso to Regulation 29(2) of Pension Regulation, the intent thereof seems to

be otherwise i.e., unless refused by the competent authority within the period prescribed in the notice, the voluntary retirement shall become automatically effective. It is in this context provisions of both regulations ought to be harmoniously constructed.

**35.** Under Regulation 20(3)(i) & (ii) of Service Regulation, competent authority can retain the employee against whom disciplinary proceedings are pending, unless permitted. At the same time, Regulation 29(2) of the Pension Regulation requires acceptance of the notice of voluntary retirement by authority. Nonetheless, its proviso contemplates that the notice for voluntary retirement becomes effective unless positively refused by the competent authority. On said reading, the intent can be gathered that while drafting Regulation 29 of Pension Regulation, the intent of Regulation 20(3)(i) and (ii) of Service Regulation has been duly taken care of, albeit in a different language. While Regulation 20(3)(i) & (ii) of Service Regulation permits the authority to not grant 'approval' where disciplinary proceedings are pending; Regulation 29 of Pension Regulation also achieves the same effectively, through its proviso, by permitting the authority to 'refuse' voluntary

retirement, but within the notice period. Therefore, essence and intent are the same subject to some restrictions. In this manner, said provisions are to be applied harmoniously.

**36.** Now reverting to the argument of issuance of the show cause notice dated 11.11.2010 is concerned, such notice must indicate the intention of institution of disciplinary proceedings, to trigger the embargo under Regulation 20(3)(ii) of the Service Regulation. For understanding the nature and context of the show-cause notice dated 11.11.2010, its relevant operative part is reproduced hereunder: -

*“Due to above action M/s. Progressive Exim Ltd. is aggrieved on the Bank and the Bank’s image has suffered. Since money was withdrawn from Current account of M/s. Bhanu Road Carriers, which was not belonging to them, the Bank was out of fund for a period from 08/10/2008 to 02/06/2010.*

*You are advised to submit your explanation within seven days from the receipt of this letter. **If no reply received from you it will be construed that you have nothing to say in the matter and further course of action will be taken against you.**”*

**37.** After reading the operative portion as above, it is clear, an explanation vis-à-vis allegations was sought from the officer and in absence of which, bank was to take further recourse. In our view,

the aforesaid content of show cause notice, is not suggestive of the intention to institute disciplinary action. Mere mention of *'further course of action'* cannot be construed as intention to institute disciplinary proceedings. Therefore, even said contention of the Appellant falls flat.

**38.** Insofar as reliance is placed on the judgments of ***R.L. Capoor - I*** (Supra) and its review in ***R.L. Capoor - II*** (Supra), it is necessary to understand its factual matrix. In the said case, the employee was working as a Branch Manager in UCO Bank and was allowed to superannuate on 1-11-1996. Prior to his retirement, only show-cause notices were issued to him on 24-10-1996 and 30-10-1996 in connection with alleged irregularities committed while sanctioning and disbursing loans under the PMRY Scheme. A charge-sheet was issued only on 13-11-1998, nearly two years after his superannuation, and upon conclusion of enquiry, the penalty of removal from service was imposed, which was also affirmed in appeal. The Respondent's writ petition was allowed in part by the High Court, which converted the penalty into compulsory

retirement, and the LPA preferred by the Bank was dismissed, taking the matter to this Court.

**39.** In the judgment of ***R.L. Capoor - I*** (Supra), this Court dismissed the Bank's appeal and held the entire disciplinary proceeding is illegal and without jurisdiction on the ground that Regulation 20(3)(iii) of the Service Regulation could be invoked only when disciplinary proceedings had been initiated prior to superannuation, and since initiation of a proceeding is only upon issuance of a charge-sheet and not merely upon a show-cause notice, the legal fiction thereunder could not be attracted.

**40.** The Bank thereafter filed a Review Petition, giving rise to the judgment of ***R.L. Capoor - II*** (Supra), seeking to rely upon Regulation 20(3)(ii) of the Service Regulation. The review petition was dismissed and this Court held that the legal fiction of deemed pendency under Regulation 20(3)(ii) of the Service Regulation is of limited scope, operating only to prevent an officer from resigning during such proceedings, and cannot be extended to constitute initiation of disciplinary proceedings for purposes of Regulation 20(3)(iii).

**41.** In both of these cases, therefore, this Court primarily examined the scope and import of Regulations 20(3)(i), 20(3)(ii) and 20(3)(iii) of the Service Regulation, and elaborated upon the meaning of the legal fiction as created by the expression '*deemed to be pending*'. Therefore, both these judgements only dealt with a very specific issue i.e., applicability of legal fiction contained in Regulation 20(3)(ii) for the purpose of Regulation 20(3)(iii). As such, we find ourselves in agreement with the submission made by the learned *amicus* that **R.L. Capoor - I** (Supra) and **R.L. Capoor - II** (Supra) only deals with the contingency of Regulation 20(3)(iii) and do not apply on the facts of the present case.

**42.** The view taken in **RL Capoor - I** (Supra) and **R.L. Capoor - II** (Supra) has also been reiterated in the judgment of **D.R.P. Sundharam** (Supra) by a Three-Judge Bench of this Court. It is to observe here that in neither of these judgements the effect of the Regulation 29 of Pension Regulation has been considered. More so, all the judgments relate to the Regulation 20(3)(iii) of the Service Regulation without dealing with the purport of Regulation 20(3)(i) & (ii) of Service Regulation which is applicable to the facts of the case

at hand. Judgements of this Court in **State Bank of India & Ors. v. Navin Kumar Sinha**<sup>9</sup> and **UCO Bank & Ors. v. M.B.Motwani (Dead) thr. L.Rs and Ors**<sup>10</sup>, dealt with the cases involving retirement on attaining the age of superannuation and the dispute was adjudicated in light of **R.L.Capoor – I** (Supra), **R.L.Capoor – II** (Supra) and **D.R.P. Sudharam** (Supra). As such, these judgements will not have any implication on the fact of the present appeals.

**43.** In light of the discussions made above and by applying the rule of harmonious construction with respect to the interplay of the said provisions of the Pension Regulation and the Service Regulation, the situation as emerges is that the officer submitted his notice of voluntary retirement on 04.10.2010, giving three months' notice as required, which would be effective till 04.01.2011. In the meantime, a show cause notice was issued by the Appellant on 11.11.2010 and as discussed, it would not indicate the intention to institute disciplinary proceedings in terms of Regulation 20(3)(ii) of the Service Regulation. Nonetheless, the existence of such a show cause notice itself is not sufficient without refusal by competent

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authority to stop the automatic operation of the notice of voluntary retirement. In absence, the notice of voluntary retirement would take its course. In the present case, no such order of refusal or order of withholding was passed by the competent authority within the stipulated period. The notice of voluntary retirement, therefore, became effective automatically by efflux of time upon the expiry of the three-month period on 04.01.2011. This Court, accordingly, finds no infirmity in the view taken by the High Court, which is liable to be upheld.

**44.** Before parting with this judgment, we deem it necessary to place on record our appreciation for the invaluable assistance rendered by learned Amicus Curiae Mr. Gaurav Agrawal, Senior Advocate by way of filing erudite submissions, therefore, we acknowledge his assistance and place the same on record.

### **CONCLUSION**

**45.** In the light of discussion made hereinabove, in our view, while passing the impugned judgment, the High Court has not committed any infirmity. The judgment rendered by the High Court is after a thorough examination of facts and applicable regulations, therefore,

the conclusion drawn as such is in right perspective. In our view, it is correct to hold that when an employee decides to sever master servant relationship and serves a notice indicating such intention specifying the period, by operation of law it will become effective in absence of any order of refusal. The subsequent act of issuing chargesheet and consequential order of dismissal is also not justified in law. As directed by the High Court, the Respondent shall be entitled to all consequential post-retiral benefits in terms of this order as well. The Bank is directed to settle all the dues within a period of three months along with applicable interest rate. Accordingly, the appeals filed by the Appellant-Bank fail and are, hereby, dismissed.

**46.** Pending application(s), if any, shall stand disposed of.

.....**J.**  
**(J.K. MAHESHWARI)**

.....**J.**  
**(VIJAY BISHNOI)**

**New Delhi;**  
**April 07, 2026.**