

2025 LiveLaw (SC) 1186

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

RAJESH BINDAL; J., MANMOHAN; J.

S.L.P. (C) No. 4818 of 2023; 9 December, 2025

ASHOK KUMAR DABAS (DEAD THROUGH LEGAL HEIRS)

versus

DELHI TRANSPORT CORPORATION

Service Law – Resignation vs. Voluntary Retirement – Forfeiture of Past Service – Pensionary Benefits – The deceased employee, a conductor with the Delhi Transport Corporation (DTC), resigned in 2014 after nearly 30 years of service citing family circumstances- He later sought to withdraw the resignation and claimed pensionary benefits, arguing that his resignation should be treated as voluntary retirement- Held that as per Rule 26 of the CCS (Pension) Rules, 1972, resignation from service entails forfeiture of past service unless withdrawn in the public interest- Since the resignation was accepted and the request for withdrawal was declined, the past service stands forfeited- Re-classifying a resignation as voluntary retirement would render Rule 26 nugatory and obfuscate the legal distinction between the two concepts- Consequently, the appellant is not entitled to pensionary benefits. [Relied on *BSES Yamuna Power Limited v. Ghanshyam Chand Sharma and another* (2020) 3 SCC 346; Paras 9-12]

Service Law – Payment of Gratuity – Applicability of Payment of Gratuity Act, 1972 – Section 4, Section 5 – Held, even in cases of resignation, an employee who has rendered continuous service for not less than five years is entitled to gratuity under Section 4(1)(b) of the Payment of Gratuity Act, 1972 - In the absence of a notification under Section 5 of the 1972 Act exempting the Corporation, the claim for gratuity cannot be denied - The legal heirs are entitled to receive gratuity for the service rendered along with 6% interest per annum from the date of resignation till payment - The respondent Corporation fairly conceded to the release of leave encashment benefits to the family members of the deceased employee - The legal heirs are entitled to receive the amount towards leave encashment. [Paras 10, 11]

For Petitioner(s): Mr. Anil Mittal, Adv. Mr. Narender Kumar Verma, AOR

For Respondent(s): Mr. Aviral Saxena, AOR Mr. Abhinav Sharma, Adv. Mr. Paritosh Goyal, Adv.

J U D G M E N T

Rajesh Bindal, J.

1. Leave granted.
2. The appellant has filed the present appeal impugning the order¹ passed by the Division Bench of the High Court². The High Court has upheld the orders³ passed by the Tribunal⁴ by which the claim of the predecessors-in-interest of the appellant, for release of the pensionary benefits of the deceased employee, was declined.

¹ Dated 20.12.2022 in W.P.(C) No.13642/2018

² High Court of Delhi at New Delhi

³ Dated 24.09.2018 in O.A. No.4645/2015 and 29.10.2018 in R.A. No.207/2018

⁴ Central Administrative Tribunal, Principal Bench, New Delhi

3. Briefly, the facts as available on record are that the deceased appellant/Ashok Kumar Dabas was selected and appointed as conductor with the respondent/Corporation⁵ in the year 1985. Vide Office Order No.16 dated 27.11.1992 a new pension scheme was introduced in the Corporation. The deceased employee opted for the same. He resigned from the job on 07.08.2014 citing family circumstances. The same was accepted by the competent authority on 19.09.2014. Later on, vide letter dated 13.04.2015 a request was made for withdrawal of the resignation. The same was declined by the competent authority of the Corporation vide order dated 28.04.2015. On 15.10.2015, the deceased employee requested the respondent for release of his retiral benefits, namely, gratuity, provident fund, leave encashment and pension. Vide order dated 23.10.2015 considering the fact that the employee/Ashok Kumar Dabas had resigned from service, the Corporation informed him that he was found entitled to only provident fund and no other benefit.

4. Aggrieved against the aforesaid order of the Corporation, an application⁶ was filed by the deceased employee before the Tribunal. The same was dismissed by the Tribunal vide order dated 24.09.2018. The appellant thereafter filed a review application⁷ which was also dismissed by the Tribunal vide order dated 29.10.2018. Still aggrieved, Ashok Kumar Dabas/deceased employee approached the High Court by filing a writ petition which was dismissed vide impugned order, as noticed above. Aggrieved against the same, the appellant is before this Court.

5. Learned counsel for the appellant submitted that the letter submitted by the deceased employee to resign from the job may not have been happily worded as he was not conversant with the legal language. The same should not be taken to the extent that he should be denied all his retiral benefits. The pension is not a bounty. It is earned by an employee after putting in long service. He had put in about 30 years of service and had resigned on account of family circumstances. Even if he had not completed 30 years of service, his period of service was more than 20 years and as per Rule 48 of Pension Rules⁸ he was entitled to receive pension. It will be too harsh to forfeit his entire service benefits merely because of a minor error in the resignation letter submitted by him. The Corporation as well as courts below should have taken a pragmatic view of the matter and not deprive the deceased employee of his retiral dues.

5.1 In support of his arguments, he referred to the judgments of this Court in **Reserve Bank of India and another v. Cecil Dennis Solomon and another**⁹ and **Shashikala Devi v. Central Bank of India & others**¹⁰. He has also referred to the judgment of the High Court in the case of **Shanti Devi v. Delhi Transport Corporation**¹¹ allowing similar relief to an employee. The Special Leave Petition (C) No.9516/2013, preferred by the Corporation against the aforesaid, was dismissed by this Court vide order dated 26.04.2013. Another judgment of the High Court relied upon by the learned counsel for the appellant is the case of **Delhi Transport Corporation v. Ram Kishan**¹².

⁵ Delhi Transport Corporation

⁶ O.A. No.4645/2015

⁷ R.A. No.207/2018 in O.A.No.4645/2015

⁸ Central Civil Services (Pension) Rules, 1972 (for short, '1972 Rules')

⁹ (2004) 9 SCC 461; 2003 INSC 688

¹⁰ (2014) 16 SCC 260; 2014 INSC 1045

¹¹ W.P.(C)No.4871/2010 decided on 15.10.2012

¹² W.P.(C)No.2627/2015 decided on 17.03.2015

5.2 As far as his claim for gratuity is concerned, he has referred to the provisions of Section 4 of the Payment of Gratuity Act, 1972¹³ which provided that even in case of resignation, if an employee had served for not less than five years, gratuity is payable to him. He submitted that even gratuity has been denied to him. His further grievance is that even emoluments towards leave encashment were not paid to him for which there is no bar as such.

6. On the other hand, learned counsel for the respondent submitted that from a perusal of the 1972 Rules applicable for the post on which the deceased employee was working, it is clear that on resignation from the job, entire service will be forfeited and no second opinion on that can be formed. Rule 26(1) of the 1972 Rules is quite explicit. Other Rules in the 1972 Rules will have application only if the appellant comes out of operation of Rule 26 thereof. It is the admitted case of the predecessors-in-interest of the appellant that the deceased employee had resigned from the job. After resignation, he cannot be permitted to claim that his resignation should be treated as voluntary retirement and he should be given pensionary benefits. The judgments relied upon by the appellant are not applicable due to the latest judgment of this Court in the case of **BSES Yamuna Power Limited v. Ghanshyam Chand Sharma and another**¹⁴ and the Judgment of the High Court in the case of **Raj Kumar v. Union of India and others**¹⁵.

6.1 He further submitted that during his service career the deceased employee had been suspended on five occasions, nine times warnings were issued on certain acts of misconduct whereas on seven occasions major and minor punishment were imposed upon him. This was his service career. In fact, he had resigned because of this.

6.2 As far as payment of gratuity is concerned, learned counsel for the respondent has submitted that even that may not be payable, as he was covered under the 1972 Rules.

6.3 Regarding payment of leave encashment, the learned counsel for the respondent has fairly submitted that the same shall be released to the family members of the deceased employee.

7. Heard learned counsel for the parties and perused the relevant referred record.

8. The basic facts which are not in dispute are that the deceased employee/Ashok Kumar Dabas was selected and joined the Corporation in the year 1985. He resigned from the job on 07.08.2014. His resignation was accepted on 19.09.2014. This was the end of his employment with the Corporation. The issue raised before this Court is regarding his entitlement to pension, gratuity and leave encashment, as was sought to be argued by the learned counsel for the appellant.

REGARDING PENSION

9. The relevant Rules of the 1972 Rules which admittedly governed the service of the deceased employee and in terms of which his entitlement to pension is to be considered, are reproduced hereunder:

“Rule 26 – Forfeiture of service on resignation

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

x x x

¹³ For short, ‘1972 Act’

¹⁴ (2020) 3 SCC 346; 2019 INSC 1324

¹⁵ (2017) SCC OnLine Del 10877; 2017:DHC:5783-DB

Rule 36 – Retiring pension – A retiring pension shall be granted -

- (a) To a Government servant who retires, or is retired, in advance of the age of compulsory retirement in accordance with the provisions of Rule 48 or 48-A of these rules, or Rule 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations; and
- (b) to a Government servant who, being declared surplus, opts for voluntary retirement in accordance with the provisions of Rule 29 of these rules.

x x x

Rule 48 – Retirement on completion of 30 years' qualifying service –

(1) At any time after a Government servant has completed thirty years' qualifying service - (a) he may retire from service, or

(b) he may be required by the appointed Authority to retire in the public interest

And in the case of such retirement the Government servant shall be entitled to a retiring pension:

Provided that –

(a) a Government servant shall give a notice in writing to the Appointing Authority at least three months before the date on which he wishes to retire; and

(b) the Appointing Authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice.

Rule 48-A – Retirement on completion of 20 years' qualifying service

(1) At any time after a Government servant has completed Twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service....”

9.1 A perusal of Rule 26 of the 1972 Rules clearly shows resignation from service entails forfeiture of past service. In the case in hand, admittedly the deceased employee resigned from service on 07.08.2014, which was accepted by the competent authority on 19.09.2014. The withdrawal of the resignation after acceptance was declined by the competent authority on 28.04.2015. Meaning thereby, it is clear that the deceased employee had resigned from service and his withdrawal from resignation was not accepted.

9.2 Rule 36 of the 1972 Rules provides that the government servant who retired or compulsorily retired shall be granted retiring pension in accordance with Rules 48 and 48-A of the 1972 Rules.

9.3 Rule 48 of the 1972 Rules talks about eligibility or grant of pension on completion of 30 years of qualifying service. Whereas Rule 48-A thereof provides for such entitlement on completion of 20 years or more of qualifying service. In the case in hand, the deceased employee had not completed 30 years of service but certainly had more than 20 years service to his credit.

9.4 Learned counsel for the respondent had referred to service records of the deceased employee during the course of his service with the Corporation, immediately starting from the period he joined service.

The same is extracted below:

“SUSPENSION

S.No.	Date of Order	Relevant Entry	Date of Suspension	No. of Days
1.	Order dated 27/09/1986	Entry 1	23/09/1986-24/10/1986	1 Month 1 day
2.	Order dated 01/06/1989	Entry 5	02/06/1989-18/08/1989	2 Months 16 days
3.	Order dated 28/06/1993	Entry 13	22/05/1993-24/09/1993	4 Months 2 days
4.	Order dated 28/09/1994	Entry 17	25/09/1994-11/10/1994	16 days
5.	Order dated 13/12/1995	Entry 20	08/12/1995-10/01/1997	1 Year 1 Month 2 Days

INCREMENT STOPPED

S.No.	Date of Order	Relevant Entry	
1		Entry 3	Stoppage of 2 increments
2	18/08/1989	Entry 6	Stoppage of 1 increment
3	30/03/1992	Entry 10	Brought back to initial basic pay
4	24/09/1993	Entry 14	Stoppage of Increment for next 2 years
5	04/10/1993	Entry 16	Stoppage of increment for next 2 years
6	13/12/1995	Entry 19	Stoppage of increment for next 2 years
7	28/02/1997	Entry 22	Stoppage of Increment for 5 years and brought back to initial basic pay

WARNING

S.No.	Date of Order	Relevant Entry	
1	08/10/1996	Entry 4	Warning
2	26/10/1989	Entry 7	Warning
3	28/08/1991	Entry 8	Warning
4	23/03/1992	Entry 9	Warning
5	03/12/1992	Entry 11	Warning
6	07/05/1993	Entry 12	Warning
7	18/08/1993	Entry 15	Warning
8	23/04/1999	Entry 23	Warning
9	29/09/2012	Entry 24	Warning

9.5 The argument raised by the learned counsel for the appellant is that the words used in his letter “notice for resignation” should not be literally construed but should be taken

as voluntary retirement so as to not deprive him of his pension, which was earned on account of more than 20 years of service rendered by him. In support of his arguments, he has relied upon **Cecil Dennis Solomon and another** and **Shashikala Devi's cases (supra)** of this Court and **Shanti Devi (supra)** of the High Court, which was confirmed by this Court.

9.6 Similar issue was considered by this Court in **BSES Yamuna Power Limited's (supra)**. Earlier judgments of this Court in **Shashikala Devi** and **Cecil Dennis Solomon and another's cases (supra)** were also considered. It was opined therein that on resignation, past service of an employee stands forfeited. Distinction between resignation and voluntary retirement was also considered. Relevant paras therefrom are extracted below:

"14. In the present case, the first respondent resigned on 7-7-1990 with effect from 10-7-1990. By resigning, the first respondent submitted himself to the legal consequences that flow from a resignation under the provisions applicable to his service. Rule 26 of the Central Civil Service Pension Rules, 1972 (the CCS Pension Rules) states that:

"26. Forfeiture of service on resignation.—(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails a forfeiture of past service."

Rule 26 states that upon resignation, an employee forfeits past service. We have noted above that the approach adopted by the Court in *Asger Ibrahim Amin [Asger Ibrahim Amin v. LIC, (2016) 13 SCC 797 : (2015) 3 SCC (L&S) 12]* has been held to be erroneous since it removes the important distinction between resignation and voluntary retirement. Irrespective of whether the first respondent had completed the requisite years of service to apply for voluntary retirement, his was a decision to resign and not a decision to seek voluntary retirement. If this Court were to re-classify his resignation as a case of voluntary retirement, this would obfuscate the distinction between the concepts of resignation and voluntary retirement and render the operation of Rule 26 nugatory. Such an approach cannot be adopted. Accordingly, the finding of the Single Judge that the first respondent "voluntarily retired" is set aside.

x x x

17. On the issue of whether the first respondent has served twenty years, we are of the opinion that the question is of no legal consequence to the present dispute. Even if the first respondent had served twenty years, under Rule 26 of the CCS Pension Rules his past service stands forfeited upon resignation. The first respondent is therefore not entitled to pensionary benefits."

From our aforesaid discussion, the only inescapable conclusion is that on resignation by the employee, his past service stood forfeited. Hence, he will not be entitled to any pension.

GRATUITY

10. As far as payment of gratuity to the legal heirs of deceased employee are concerned, their claim is based on the argument that they are entitled to payment of gratuity in terms of Section 4 of the Payment of Gratuity Act, 1972¹⁶. The same is extracted below:

"4. Payment of gratuity – (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years. -

- (a) On his superannuation, or
- (b) On his retirement or resignation, or

¹⁶ Hereinafter, "1972 Act"

(c) On his death or disablement due to accident or disease: Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement.”

10.1 A perusal of the aforesaid section clearly shows that an employee who had rendered not less than five years of service will be entitled to payment of gratuity, regardless of the fact that he had retired or resigned from service.

10.2 There is no dispute on the fact that in terms of Section 5 of the 1972 Act there is no notification issued by the appropriate government exempting the Corporation from the application of the 1972 Act. Once it could not be established by the respondent that the 1972 Act is not applicable to the Corporation, the claim of the appellant for release of gratuity cannot be denied even if he had resigned from service. Hence, they are held entitled to receive gratuity in terms of the provisions of the 1972 Act for the service rendered by him.

LEAVE ENCASHMENT

11. Insofar as payment of emoluments towards leave encashment is concerned, learned counsel for the respondent had fairly submitted that amount due to the deceased employee shall be paid to his family members.

12. For the reasons mentioned above, the present appeal is partly allowed to the extent that the legal heirs of deceased employee are held entitled to receive gratuity in terms of provisions of the 1972 Act. They are also held entitled to receive amount towards his leave encashment. As far as grant of family pension is concerned, the claim being not admissible as per 1972 Rules, no relief on that account can be granted to the legal heirs of deceased employee. The amount due to the deceased employee be paid within a period of six weeks along with interest @6 % p.a. from the date of his resignation till payment.

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