HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 737/2023

Bhikam Chand S/o Gulab Chand Ji, Aged About 57 Years, R/o Behind Sardul Sport School, Indira Colony, Bikaner, Rajasthan.

----Petitioner

Versus

1. The State Of Rajasthan, Through Chief Secretary, Jaipur.
2. Government Of Rajasthan, Finance Department, Through Joint Secretary, Secretariat, Jaipur.
3. Director, Elementary Education, Government Of Rajasthan, Bikaner.
4. District Education Officer, Elementary Education, Bikaner.

----Respondents

For Petitioner(s) : Ms. Heli Pathak
Mr. Harshit Bhurani
Mr. Mahipal Singh Rathore

For Respondent(s) : Mr. Shyam Sunder Ladrecha, AAG
assisted by Mr. Ravindra Jala

HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE MUNNURI LAXMAN

Order

REPORTABLE

20/03/2025

By the Court (Per Hon'ble the Chief Justice):

1. By this petition, under Article 226 of the Constitution of India, the petitioner seeks to assail constitutional validity of a part of provision contained in Sub-Rule (4), including proviso thereof, of Rule 50 of the Rajasthan Civil Service (Pension Rules), 1996 (hereinafter referred to as 'the Rules of 1996').

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2. Relevant facts necessary for adjudication of the controversy involved in this petition are that the petitioner, while working on the post of Lab Boy in the Elementary Education department, State of Rajasthan and working in "Rajkiya Maharani Balika Ucch Madhyamik idyalaya", Bikaner, driven by certain circumstances leading to uicide of his son, submitted an application seeking voluntary etirement from service invoking the provisions contained in Rule 50 of the Rules of 1996 in the month of October, 2022. Vide order dated 14.11.2022, the application for voluntary retirement was allowed by stating that voluntary retirement shall take effect from 01.02.2023.

3. After few days thereafter, the petitioner changed his mind and then submitted an application on 07.12.2022 seeking to withdraw the application for voluntary retirement. The application, however, came to be rejected vide communication dated 13.12.2022 in view of the provisions contained in the Rules as the Rules provide that once the request of a government servant for voluntary retirement has been accepted and communicated to him in writing by the appointing authority, it shall not be open to the government servant to withdraw the request for voluntary retirement. The petitioner has now challenged the validity of the provision itself.

4. Learned counsel for the petitioner argued *in extenso* before us and contended that the provision under challenge suffers from manifest arbitrariness, unreasonableness and irrationality inasmuch as that such a prescription contained in the Rules restricting the liberty to withdraw the application for voluntary retirement after acceptance, is against the law consistently laid down by the Hon'ble Supreme Court in several judicial pronouncements that an application for voluntary retirement could be withdrawn any time

before it becomes effective. He would submit that the provision has been added by way of amendment in the year 2016 vide notification dated 14.01.2016, which is against the settled principles of law.

4.1 Further submission of learned counsel for the petitioner is that provision for voluntary retirement is essentially at the initiation of a overnment servant and, therefore, until it becomes effective, there s no reason why he should not be allowed to withdraw the said application before it becomes effective and any restriction on exercise of this option before it becomes effective is destructive of the main provision providing for three months of notice for voluntary retirement. He would further submit that present is not a case where the petitioner had invoked preponement clause so as to say that he was determined to give up employment for his own personal reasons and the order of acceptance was passed on or after the preponed date of voluntary retirement. It is further submitted that the objective behind such provision is to allow a government servant to reflect upon a decision taken to quit from service. Undue restriction without any objective or rationality renders the provision violative of Article 14 of the Constitution of India. In support of his contention, learned counsel for the petitioner has placed reliance upon the decisions in the cases of **Balram Gupta Vs. Union of India & Anr. [1987 (Supp) SCC 228], Shayara Bano Vs. Union of India & Ors. [(2017) 9 SCC 1], Union of India & Anr. Vs. Wing Commander T. Parthasarathy [2001 (1) SCC 158], Association for Democratic Reforms & Anr. Vs. Union of India & Ors. [2024 (5) SCC 1], Raj Kumar Vs. Union of India [AIR 1969 SC 180], State of Maharashtra & Anr. Vs. Chandrakant Anant Kulkarni & Ors. [1981 (4) SCC 130], Punjab National Bank Vs.**

P.K. Mittal [1989 Supp (2) SCC 175] and decision of Kerala High Court in the case of **Faziludeen Vs. Union of India & Ors. [OP (CAT) No.22 OF 2023]**.

5. *Per contra*, learned Additional Advocate General would submit that challenge to the validity of the Rule would not be permissible merely because it is harsh or restricts the option to withdraw in certain contingencies. The submission is that the Rule does not put a complete embargo to withdraw application for voluntary retirement and it is always open for the petitioner to withdraw the same. It has now been made a statutory policy by the rule making authority that such option would be exercisable only before the voluntary retirement application is accepted and communicated. Therefore, such a provision does not, in terms, makes it impossible for an employee to withdraw the application for voluntary retirement after he has submitted it, but to restrict it till it is accepted. Learned Additional Advocate General would also highlight that once an application is considered and accepted, the voluntary retirement has to necessarily take effect from the date mentioned in the order and any option given thereafter would create unwarranted and uncalled for administrative inconvenience and chaos in the administration. He would submit that in fact, the Hon'ble Supreme Court acknowledges this legal position in its judgment in the case of **Wing Commander T. Parthasarathy(supra)**.

5.1 He would further submit that the principle, which has been subsequently laid down by Hon'ble Supreme Court in plethora of decisions, that as soon as resignation is accepted, it becomes effective, has to be applied in these cases also. All options have to be closed once the application seeking voluntary retirement is accepted.

There is no unfair treatment to an employee because voluntary retirement is an outcome of willingness of the employee himself and once he has submitted his application, he cannot claim unrestricted right to seek withdrawal of the application for voluntary retirement.

.2 He would further submit that the decision relied upon by the etitioner in the case of **Balram Gupta Vs. Union of India & Anr. supra)** is distinguishable in view of various judgments which were considered by Hon'ble Supreme Court in that case and he seeks to rely upon those judgments, namely, **Raj Kumar Vs. Union of India (supra), State of Maharashtra & Anr. Vs. Chandrakant Anant Kulkarni & Ors. (supra)** as also **Punjab National Bank Vs. P.K. Mittal (supra)**.

6. Before we advert to the submissions made by learned counsel for the parties and examine the challenge to the constitutional validity of the provisions impugned, we consider it apposite to reproduce, for ready reference, the provisions contained in Rule 50, as amended from time to time.

The provision relating to voluntary retirement which was in force on the date the application for voluntary retirement, was as below:

> *"**50. Retirement on completion of 15 years' qualifying Service.-** (1) At any time after a Government servant has completed fifteen years qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service."*
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> *(2) The notice of voluntary retirement given under sub rule (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 automatically become effective from the date of expiry of the said period.*

(3) (a) A Government servant referred to in sub rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons thereof;
(b) On receipt of a request under clause (a), the appointing authority subject to the provisions of sub rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months.

(4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority. The application for withdrawal of notice of voluntary retirement shall be presented to the appointing authority, before issue of the order of acceptance voluntary retirement:
Provided that once the request of the Government servant for voluntary retirement, has been accepted and communicated to him in writing by the appointing authority, it shall not be open to the Government servant to withdraw the request of voluntary retirement.

(5) The pension and retirement gratuity of the Government servant retiring under this rule shall be based on the emoluments as defined under rule 45 of Rajasthan Civil Services (Pension) Rules, 1996, which the Government servant was receiving immediately before the date of retirement, and the increase not exceeding five years in his qualifying service under rule 51 shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

(6) This rule shall not apply to a Government servant who retires from Government service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.
***Explanation**- For the purpose of this rule, the expression "appointing authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement.*

(7) If a Government servant seeks retirement under this rule while he is on leave not due, without returning to duty, the retirement, shall take effect from the date of commencement of the leave not due and the leave salary paid in respect of such leave shall be recovered from him.

(8) A Government servant who gives notice of voluntary retirement under sub rule (1) of rule 50 shall satisfy

himself by means of a reference to the appointing authority who is competent to retire him to the effect that he has, in fact, completed 15 years qualifying service for pension."

7. The scheme of rule of retirement on completion of 15 years of qualifying service, amongst other things, provides that a government servant, after he has completed 15 years of qualifying service, may, by giving notice of not less than three months in writing to the appointing authority, retire from service. Sub-Rule (2) thereof incorporates the requirement of acceptance of notice of voluntary retirement. Proviso to the provisions Sub-Rule (1) further provides that where the appointing authority does not refuse to grant the permission for retirement before the expiry of period specified in the notice, retirement shall automatically become effective from the date of expiry of the said period.

8. Sub-Rule (3) incorporates right of preponement of the date from which the voluntary retirement has to take effect. A government servant may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons thereof. It means that ordinarily the period of notice has to be three months but an option has been given to the employee to prepone it for reasons to be given. Moreover, the appointing authority has to consider such application of preponement of curtailment of the period of notice of three months on merits and it is only when he is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months.

9. Sub-Rule (4) deals with contingencies that may arise subsequent to submission of application. It provides that where a government servant has elected to retire and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of the authority. The second part of Sub-Rule (4) further provides that the application for withdrawal of notice of voluntary retirement shall be presented to the appointing authority before issue of the order of acceptance of voluntary retirement. That means, the Rule restricts the period within which option to withdraw the application for voluntary retirement may be withdrawn and the cut off point is the acceptance and communication of the application for voluntary retirement. The proviso also makes it further clear by providing that once the request of government servant for voluntary retirement has been accepted and communicated to him in writing by the appointing authority, it shall not be open to the government servant to withdraw the request of voluntary retirement.

10. A holistic reading of the scheme of voluntary retirement, as discussed hereinabove, reflects that while the service rules give an option to a government servant to seek voluntary retirement upon completion of certain minimum period of service rendered by him, such voluntary retirement application is subject to acceptance by the competent authority. In any case, if no order is passed accepting or rejecting, the voluntary retirement becomes effective after expiry of period of three months notice. Moreover, statutory scheme gives the government servant further option to prepone the same and also withdraw the notice.

11. It is that part of the provision which seeks to restrict and curtail the right of the petitioner to withdraw his application which is under challenge in this petition.

12. The challenge to the validity is not based on lack of any legislative competence or on the ground that it is *ultra vires* the provisions contained in any part of the Constitution (except Article 14) or provisions of any enactment of the State but the entire challenge is premised on the submission that the Rule is unreasonable, irrational and suffers from manifest arbitrariness and, therefore, violative of Article 14 of the Constitution of India.

13. At this stage, we shall refer to the decisions of Hon'ble Supreme Court delineating the scope of judicial review in the matter of challenge to the provision contained in any law which includes rules also, which has the force of law.

14. The Constitution Bench of the Hon'ble Supreme Court in the case of **Shayara Bano Vs. Union of India & Others (Ministry of Women and Child Development Secretary and Others) (2017) 9 SCC 1** dealt with the scope of judicial review in the matter of challenge to the validity of provision of law contained in a legislative enactment or a rule or regulation on the ground of manifest arbitrariness. Their Lordships laid down the test of manifest arbitrariness with reference to earlier decisions as below:

> "**100.** To complete the picture, it is important to note that subordinate legislation can be struck down on the ground that it is arbitrary and, therefore, violative of Article 14 of the Constitution. In *Cellular Operators Assn. of India v. TRAI*, this Court referred to earlier precedents, and held: (SCC pp. 736-37, paras 42-44)
>
> "*Violation of fundamental rights*
>
> 42. We have already seen that one of the tests for challenging the constitutionality of subordinate legislation is

that subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. [See *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*, SCC at p. 689, para 75.]

43. The test of "manifest arbitrariness" is well explained in two judgments of this Court. In *Khoday Distilleries Ltd. v. State of Karnataka*, this Court held: (SCC p. 314, para 13)

> '13. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the Rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. *The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power.* In *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*, this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A *subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; "unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary"*. Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, "Parliament never intended the authority to make such rules; they are unreasonable and ultra vires". In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.'

44. Also, in *Sharma Transport v. State of A.P.*, this Court held: (SCC pp. 203-04, para 25)

> '25. ... The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was

> not reasonable and manifestly arbitrary. The expression "arbitrarily" means: in an unreasonable manner as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.' "
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> (emphasis in original)

101. It will be noticed that a Constitution Bench of this Court in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

15. Recently, in another Constitution Bench decision in the case of **Association for Democratic Reforms & Another (Electoral Bond Scheme) Vs. Union of India & Others (2024) 5 SCC 1**, the aforesaid principles governing scope of judicial review on the ground of manifest arbitrariness were reiterated thus:

> "**197.** In Joseph Shine v. Union of India, a Constitution Bench of this Court expressly concurred with the doctrine of manifest arbitrariness as evolved in *Shayara Bano.* In *Joseph Shine*, one of us (D.Y. Chandrachud, J.) observed that the doctrine of manifest arbitrariness serves as a check against State action or legislation "which has elements of caprice, irrationality or lacks an adequate determining principle". In *Joseph Shine*, the validity of Section 497 of the Penal Code was challenged. Section 497 penalised a man who has sexual intercourse with a woman who is and whom he knows or has a reason to believe to be the wife of another man, without the "consent and connivance of that man" for the offence of adultery."

16. The jurisprudential development on the scope of judicial review on the ground of manifest arbitrariness was addressed with

reference to several authoritative pronouncements in the cases of **Navtej Singh Johar v. Union of India (2018) 10 SCC 1; Jospeh Shine v. Union of India (2019) 3 SCC 39 and Shayara Bano Vs. Union of India & Others (Ministry of Women and Child Development Secretary and Others) [supra]**. Following pertinent observations, providing beacon light for the courts while examining as to whether a provision of law suffers from manifest arbitrariness, were made by the Hon'ble Supreme Court in the above case:

> "**199.** D.Y. Chandrachud, J. in his opinion in *Joseph Shine* observed that a provision is manifestly arbitrary if the determining principle of it is not in consonance with constitutional values. The opinion noted that Section 497 makes an "ostensible" effort to protect the sanctity of marriage but in essence is based on the notion of marital subordination of women which is inconsistent with constitutional values. Misra, C.J. (writing for himself and A.M. Khanwilkar, J.) held that the provision is manifestly arbitrary for lacking "logical consistency" since it does not treat the wife of the adulterer as an aggrieved person and confers a "licence" to the husband of the woman.
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> **200.** It is now a settled position of law that a statute can be challenged on the ground that it is manifestly arbitrary. The standard laid down by Nariman, J. in *Shayara Bano*, has been citied with approval by the Constitution Benches in *Navtej Singh Johar* and *Joseph Shine*. Courts while testing the validity of a law on the ground of manifest arbitrariness have to determine if the statute is capricious, irrational and without adequate determining principle, or something which is excessive and disproportionate. This Court has applied the standard of "manifest arbitrariness" in the following manner:
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> **200.1.** A provision lacks an "adequate determining principle" if the purpose is not in consonance with constitutional values. In applying this standard, Courts must make a distinction between the "ostensible purpose", that is, the purpose which is claimed by the State and the "real purpose", the purpose identified by courts based on the available material such as a reading of the provision; and"

17. Thus, the courts while deciding validity of a law on the ground of manifest arbitrariness have to determine if the statute is capricious, irrational and without adequate determining principle or

something which is excessive and disproportionate. Further, in a given case, it can be held that a provision lacks "adequate determining principle", if the purpose is not in consonance with the constitutional values.

8. Keeping in forefront the limited scope of judicial review in the matter of challenge to the validity of law on the ground of manifest arbitrariness, we shall examine impugned provision to find out whether it suffers from manifest arbitrariness and, therefore, violative of Article 14 of the Constitution of India.

19. Scheme of premature retirement over the period has been an essential attribute of public employment both under the State and the Central Government and in many Semi-Government institutions and instrumentalities of the State. Premature retirement can be sub-divided in three categories. One of the ways in which a government servant quits service before attaining the age of superannuation is what is popularly known as voluntary retirement. Provisions of voluntary retirement is an option for a government servant provided he fulfills certain conditions before he could invoke his option to voluntary retire from service. In most of the cases including the present case, the option could be invoked only after having completed certain minimum period of service. As retirement entitles a government servant to various retiral benefits as also pension, which he has to earn, there is a prescription in almost every rule including the one applicable in the present case that option for voluntary retirement could be availed only after having rendered minimum period of service, 15 years in the present case. The other contingencies in which a government servant may retire prematurely are: either compulsory retirement, as a measure of punishment on

proof of any misconduct and; compulsory retirement in public interest, not being a measure of punishment, but only intended to weed out a dead wood.

20. Unlike in the cases of premature retirement, either as a measure of punishment or to weed out a dead wood in public interest, a provision for voluntary retirement ordinarily provides for a window and does not come into effect immediately.

21. In the case in hand, the rules relating to voluntary retirement contained its own peculiar scheme under which the voluntary retirement ordinarily comes into effect only after expiry of the period of notice, which is three months from the date of submission of application for voluntary retirement. Such a provision providing three months before the voluntary retirement takes effect appears to have two fold objectives. One may be that when a government servant submits an application for voluntary retirement from service, there may be various contingencies which may require consideration on the part of the employer *viz* where departmental enquiry is pending or any recovery has to be made from the government servant or similar contingencies which may be ground for the authority not to accept but to reject such an application for retirement. The other contingency which according to us is ingrained in such a scheme of providing a window of three months is that many a times a government servant, actuated by certain turn on events, may in the heat of moment, submit application for voluntary retirement which may be an outcome of an extraordinary event and it may be more in the nature of knee jerk reaction rather than a well thought and conscious decision taken to quit the job. The effect of quitting job entitles a person to get retiral benefits even before he attains the

age of superannuation, but at the same time, it also results in financial loss as the amount of pension is much less as compared to the salary and other benefits which a government servant enjoys while in service. The period of three months gives the government servant an opportunity to rethink over his decision and to roll back by withdrawing his application for voluntary retirement. This right of the government servant is clearly recognized under the Rules by providing that a government servant, even after having submitted an application for voluntary retirement, may withdraw the same. Therefore, there is a definite objective behind postponing the date of taking effect of the voluntary retirement upon submission of the application.

22. The Rule also incorporates a provision where a government servant may prepone the period of three months. However, the language of the provision is clearly indicative of the intention of the rule making authority that such prayer for preponement has not only to be supported by reasons but the appointing authority has to consider such request for curtailment of the period of three months on merits and it is only upon satisfaction that the curtailment of the period of notice will not cause any administrative inconvenience that relaxation as prayed for may be accepted.

23. Sub-Rule (4) precludes the government servant from withdrawing his notice except with the specific approval of the authority. That means, there is no absolute embargo on withdrawal of application for voluntary retirement but the same is subject to approval of the authority. This provision, on its true construction, means that once the application has been submitted, withdrawal will not be as a matter of course but only upon approval of the authority.

Such requirement of approval necessarily enjoins the authority with the statutory obligation to apply its mind to the reasons why the employee has chosen to withdraw the application.

24. However, the second part of the provision contained in Sub-rule (4) of Rule 50 coupled with what has been contained in the proviso attached thereto, contains certain restrictions and curtailment with regard to the period upto which the application for withdrawal could be submitted. It provides that the application for withdrawal of notice of voluntary retirement shall be presented to the appointing authority before issuance of the order of acceptance of voluntary retirement. That means, the option to withdraw the application for voluntary retirement has to be exercised before issuance of the order of acceptance of voluntary retirement. The proviso attached only makes this provision clear by providing that once the request for voluntary retirement has been accepted and communicated to the employee in writing, it shall not be open to the government servant to withdraw the request of voluntary retirement.

25. If we juxtapose the proviso and the provision contained in Sub-Rule (4) with the provision contained in Sub-Rule (1), the manner in which restriction has been incorporated to limit the option without reference to any determining principle, appears to be destructive of the objective of having three months window period before an application for voluntary retirement becomes effective. There would have been no difficulty had the provision not been absolute in terms but in a qualified manner that the withdrawal would only be subject to the approval of the authority. However, the point of time when acceptance takes place, determines in absolute terms that thereafter, even if the period of three months notice has not expired, the option

to withdraw voluntary retirement application could not be exercised. Such a provision, therefore, is destructive of the main objective of the provision to provide three months period so that an employee may have sufficient time to think over whether or not he should continue with his request for voluntary retirement.

6. The provision also appears to be unfair. In a given case, if there are no administrative inconveniences or other impediments, the authority may at once accept the application for voluntary retirement but that period of three months is curtailed and thereafter the employee does not have the option to withdraw his application for voluntary retirement. Therefore, even though ordinarily there is a period of three months prescribed under the Rules within which the employee could withdraw his application for voluntary retirement, it is subject to acceptance of the application by the authority. Thus, such a rule which restricts the option of the employee to apply for withdrawal after acceptance of the application for voluntary retirement, operates differently. That way it appears to be quite unfair also.

27. We shall now deal with with the decisions cited at the Bar by learned counsel for the respective parties. Some of the decisions are common. Learned counsel for the respective parties have relied upon the decisions of the Hon'ble Supreme Court in the cases of **Raj Kumar Vs. Union of India (supra); Balram Gupta Vs. Union of India & Anr.(supra) and Punjab National Bank Vs. P.K. Mittal (supra).**

28. In **Raj Kumar Vs. Union of India (supra),** the issue which fell for consideration of the Hon'ble Supreme Court was whether acceptance of resignation was required to be communicated to the

employee to make it effective. On facts of that case and relying upon instructions/letter, it was held that resignation was to become effective as soon as it was accepted by the appointing authority and there was nothing in the rules applicable to provide that for an order accepting the resignation to be effective must be communicated to the person submitting his resignation. Drawing a distinction between legal position with regard to the date on which a resignation or termination would become effective, it was observed that though termination of an employee by an order passed by the Government does not become effective until the order is communicated to the employee, in case of resignation, in the absence of any contrary provision, resignation becomes effective the moment it is accepted. The aforesaid decision does not deal with a case of voluntary retirement, nor does it deal with contingencies as stipulated under the rules applicable in the case in hand. Under the scheme of the rules applicable in the case in hand, voluntary retirement becomes effective only after expiry of the period of three months unless without approval of the appointing authority, such period is preponed.

The decision aforesaid is, therefore, not an authority for the proposition that voluntary retirement comes into effect, the moment it is accepted. Rather, acceptance only means that voluntary retirement would become effective from the date of expiry of period of notice of three months or with effect from preponed date.

29. In the case of **Balram Gupta Vs. Union of India & Anr. (supra)**, it was held that a notice of voluntary retirement can be withdrawn at any time before retirement becomes effective notwithstanding any rule provided for obtaining of specific approval

of the concerned authority as a condition precedent to withdrawal of notice. It was held that the authority was not entitled to refuse to grant approval for withdrawal in the absence of any reason showing disturbance in administrative setup or arrangement as a result of such withdrawal. Though one of the question cropped up in the above case that whether a particular provision, Sub-rule (4) of Rule 48-A of the Central Civil Services (Pension) Rules, 1972 was violated, was left open and not decided. Sub-rule (4), as mentioned hereinabove, provided that a Government servant who has elected to retire under the rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority. In that case, there was no complete embargo on withdrawal of notice of retirement, but it was condition of specific approval of the authority once a government servant has given notice to that effect. The Hon'ble Supreme Court only examined whether the exercise of power was proper. The Hon'ble Supreme Court noted legal position as adumbrated in the case of **Raj Kumar Vs. Union of India (supra)** in the matter of notice of resignation that till the resignation was accepted by the appropriate authority in consonance with the rules governing the acceptance, public servant concerned has locus poenitentiae, but not thereafter. However, a distinction was drawn on the facts of that case that the voluntary retirement from government service was to take effect at a subsequent date prospectively and withdrawal was long before date. On that count, it was held that the appellant in that case had locus poenitentiae. The issue of validity of Sub-rule (4) of Rule 48-A of the Central Civil Services (Pension) Rules, 1972 applicable in that case

was considered not necessary to be answered by holding that if the power of granting or not granting approval is properly exercised, it may be a salutary rule. What was laid down in that case was that there may be a salutary requirement that a government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the Government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme and reason, a rule putting limited embargo on withdrawal conditioned with previous approval may be a salutary rule provided approving authority which is the statutory authority acts reasonably and rationally. On the facts of that case, it was found that while refusing to grant approval, valid reasons were not granted and the decision was arbitrary and unreasonable. Following pertinent observations were made with regard to need for flexibility in laying down a rule with regard to voluntary retirement, withdrawal of application for voluntary retirement and need for a provision permitting public servant to withdraw application for voluntary retirement as a measure of flexibility:

> "**13.** …… In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty; a certain amount of flexibility is required, and if such flexibility does not jeopardize government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. ….."

30. In the case of **Punjab National Bank Vs. P.K. Mittal (supra),** it was held that even in the absence of enabling provision, public servant could withdraw resignation before the same became effective. It was held thus:

"**6.** ….. As we have already mentioned, resignation is a voluntary act of an employee. He may choose to resign with immediate effect or with a notice of less than three months if the bank agrees to the same. He may also resign at a future date on the expiry, or beyond the period, of three months but for this no further consent of the bank is necessary. The acceptance of the argument of Dr. Anand Prakash would mean that, even though an employee might express a desire to resign from a future date, the resignation can be accepted, even without his wishes, from an earlier date. This would not be the acceptance of a resignation in the terms in which it is offered. It amounts really to forcing a date of termination on the employee other than the one he is entitled to choose under the regulations. As rightly pointed out by the High Court, the termination of service under clause (2) becomes effective at the instance of the employee and the services of the employee cannot be terminated by the employer under this clause.

7. Dr. Anand Prakash emphasises that as clause (2) and its proviso are intended only to safeguard the bank's interests they should be interpreted on the lines suggested by him. We are of the opinion that clause (2) of the regulation and its proviso are intended not only for the protection of the bank but also for the benefit of the employee. It is common knowledge that a person proposing to resign often wavers in this decision and even in a case where he has taken a firm decision to resign, he may not be ready to go out immediately. In most cases he would need a period of adjustment and hence like to defer the actual date of relief from duties for a few months for various personal reasons. Equally an employer may like to have time to make some alternative arrangement before relieving the resigning employee. Clause (2) is carefully worded keeping both these requirements in mind. It gives the employee a period of adjustment and rethinking. It also enables the bank to have some time to arrange its affairs, with the liberty, in an appropriate case, to accept the resignation of an employee even without the requisite notice if he so desires it. The proviso in our opinion should not be interpreted as enabling a bank to thrust a resignation on an employee with effect from a date different from the one on which he can make his resignation effective under the terms of the regulation. We, therefore, agree with the High Court that in the present case the resignation of the employee could have become effective only on or about April 21, 1986 or on June 30, 1986 and that the bank could not have "accepted" that resignation on any earlier date. The letter dated February 7, 1986 was, therefore, without jurisdiction.

8. …… Since the withdrawal letter was written before the resignation became effective, the resignation stands withdrawn, with the result that the respondent continues to

> be in the service of the bank. It is true that there is no specific provision in the regulations permitting the employee to withdraw the resignation. It is, however, not necessary that there should be any such specific rule. Until the resignation becomes effective on the terms of the letter read with Regulation 20, it is open to the employee, on general principles, to withdraw his letter of resignation. That is why, in some cases of public services, this right of withdrawal is also made subject to the permission of the employer. There is no such clause here. It is not necessary to labour this point further as it is well settled by the earlier decisions of this Court in *Raj Kumar v. Union of India, Union of India v. Gopal Chandra Misra and Balram Gupta v. Union of India*."

31. The aforesaid decision explains the legal position with regard to voluntary retirement that an employee may choose to resign with immediate effect or with a notice of not less than the period as prescribed under the rule provided the employer agrees to the same. Further, the employee may also resign at a future date on the expiry or beyond the period stipulated, but for this no further consent of the employer is necessary. Acceptance of the resignation prior to the date chosen by the employee would not be acceptance of a resignation in terms for which it is offered, but would really amount to forcing a date of termination on the employee other than the one he is entitled to choose under the service regulations. Moreover observations made by the Hon'ble Supreme Court in the case of **Balram Gupta Vs. Union of India & Anr.(supra)** were also more or less echoed that it is common knowledge that a person proposing to resign often wavers in his decision and even in a case where he has taken a firm decision to resign, he may not be ready to go out immediately. In most cases, he would need a period of adjustment and hence like to defer the actual date of relief from duties for a few months for various personal reasons. Equally an employer may like to have time to make some alternative arrangement before relieving

the resigning employee and the provision of voluntary retirement intended to be given effect to after expiry of period of three months provided in the rules. Normally, both the above requirements would be kept in mind as it gives ample period of adjustment and rethinking and at the same time, enables the employer also to rearrange its affairs with reference to administrative considerations. The view taken by the High Court that resignation of the employee could have become effective only from a future date chosen by the employee and that the bank could not have accepted the same from an earlier date was upheld.

32. The aforesaid case did not relate to a case of voluntary retirement but deals with legal position with regard to effective date of resignation with reference to the provisions contained in the governing regulations. However, what has been culled out as principled approach is that date of resignation or voluntary retirement, as the case may be, cannot be made effective from a date prior to the date chosen by the public servant and an earlier date cannot be enforced as termination. To that limited extent, we see no reason why the said principle should not be applied here also in the case of voluntary retirement.

33. Factual premise on which decision in the case of **Union of India & Anr. Vs. Wing Commander T. Parthasarathy (supra)** was rendered by the Hon'ble Supreme Court was that an application dated 21.07.1985 praying for premature retirement from service with effect from 31.08.1986 with six months leave preparatory to retirement was made by the respondent therein. However, on 06.11.1985, the respondent therein seeking premature retirement

sought to amend his earlier application to the effect that date of release be decided taking into account the pensionary recommendations/requirements of the Fourth Pay Commission's Report which was expected to come in November, 1985. According to employee, the letter for premature retirement, read with subsequent request for amendment stood altered before any decision was taken or communicated. On 19.02.1986, stating certain family reasons, application was filed by the respondent therein seeking to withdraw the application for premature retirement. However, on 07.03.1986, the respondent-officer was served a communication dated 06.03.1986 giving reference to receipt of letter dated 20.02.1986 from the Headquarter regarding premature retirement from service with effect from 31.08.1986. The request for withdrawal of application for premature retirement was not accepted on the ground that the Headquarter does not accede to such request for cancellation after initial approval.

Employer's defence that the employee having given a certificate regarding he being aware of the fact that his request for withdrawal/ cancellation of application for premature retirement made subsequently will not be accepted in view of the applicable policy, placing reliance on decision in the case of **Raj Kumar Vs. Union of India (supra)**, did not find favour. The decision in the case of **Raj Kumar Vs. Union of India (supra)** was distinguished by the Hon'ble Supreme Court. It was held that the employee had a right and was entitled to withdraw or revoke his request earlier made before it really became effective. In the aforesaid case, it was, however, observed that such withdrawal could be made in the absence of any statutory rule or any provision or an Act to the

contrary which seeks to impede or deny the right of the employee to seek withdrawal.

34. Relying upon the aforesaid decision, it has been strongly contended by learned counsel for the respondents that since in the present case, there is rule to the contrary, even if the voluntary retirement was to take effect at a later date, once application for voluntary retirement has been accepted, the right to seek withdrawal of application for voluntary retirement would no longer be exercisable, being not available.

35. True it is that in the aforesaid decision of **Union of India & Anr. Vs. Wing Commander T. Parthasarathy (supra)**, it was observed that unless there is a rule to the contrary, the right to withdraw or revoke application for premature retirement could be made before the date of retirement to really and effectively become effective, the validity of any such rule was not under challenge in the aforesaid case. The aforesaid decision is not an authority for the proposition that a rule restricting withdrawal of application for voluntary retirement, even before it becomes effective on a prospective date, under all circumstances, would be valid. It would essentially depend upon many factors while deciding as to whether such a rule restricting withdrawal application even before the effective date of voluntary retirement would always be valid. Therefore, challenge to the validity of the rule, as in the present case, cannot be turned down on the basis of what has been held in the case of **Union of India & Anr. Vs. Wing Commander T. Parthasarathy (supra)**. If the rule operates in a manner which is not fair and lacks adequate determining principle, it would require independent examination.

Lack of Adequate Determining Principle:

36. The scheme engrafted in Rule 50 of the Rules of 1996 lays down its own statutory policy under which an employee has been given a right to prepone the effective date of retirement which ormally is three months from the date of application for voluntary etirement. Under the rule, such application requires consideration n the part of the employer and prayer can be accepted only when the employer is satisfied that curtailment of the period of notice will not cause any administrative inconvenience.

Further, an application for withdrawal of the voluntary retirement may not be accepted mechanically and the rule requires that an employee shall be precluded from withdrawing his/her notice except with specific approval of the authority. However, proviso to sub-rule (4) of Rule 50 of the Rules of 1996, which is under challenge in the present case, operates in unfair manner. While at every stage, the employer retains a right to accept or not to accept prayer for preponement of the effective date of retirement and even prayer for voluntary retirement, a complete embargo has been placed on submission of application for withdrawal of voluntary retirement once the application for voluntary retirement is accepted and decision thereof communicated, without reference to any administrative inconvenience which is the guiding rule to accept or not to accept prayer for voluntary retirement. While it is in the domain of the statutory policy to provide a cut off date before which application for withdrawal of voluntary retirement could be entertained, at the same time, a complete restriction, without any consideration whatsoever on withdrawal application after acceptance and communication, appears to be suffering from manifest

arbitrariness and at the same time unfair, particularly when under the scheme of the rule itself, the effective date of voluntary retirement is yet to arrive.

Proceeding on a well accepted legal position that jural relationship between the employer and the employee continues till the effective date of voluntary retirement, truncating the right of withdrawal of application for voluntary retirement even before the effective date of retirement without any adequate determining principle renders the provision arbitrary and violative of Article 14 of the Constitution of India.

Certainly, as a matter of law, the principle propounded in the case of **Raj Kumar Vs. Union of India (supra)** that as soon as resignation is accepted, in the absence of any provision to the contrary, it becomes effective even without communication, has no application in the present case. Resignation from service and seeking voluntary retirement have consequences to follow. A prayer for premature/voluntary retirement is a desire of an employee to end his/her services while retaining benefits of retirement which will enure to him upon retirement. However, such voluntary retirement results in drastic reduction in monthly receipt of the employee because the pension which an employee would be getting upon retirement is far less than the salary which he/she was drawing on the date of retirement. True it is that retirement would entitle an employee to receive various retiral benefits, there are many other relevant considerations depending on family circumstances, health conditions that may change the mind of an employee not to seek voluntary retirement, but continue in service till attaining the age of superannuation.

37. There is no corresponding provision inbuilt in the rule that from the date of acceptance of application for voluntary retirement and its communication, the retirement will become effective. There lies distinction between resignation and voluntary retirement on this crucial aspect. Acceptance of application for voluntary retirement only means that the employer has accepted the employee to retire from a prospective date and not with immediate effect. Even after acceptance of application for voluntary retirement and communication thereof, the employee continues in service and there exists, in the eyes of law, the relationship of master and servant.

The observations made by the Hon'ble supreme Court in the cases of **Balram Gupta Vs. Union of India & Anr. (supra)** and **Punjab National Bank Vs. P.K. Mittal (supra)** recognise that in the modern and uncertain age, it is very difficult to arrange one's future with any amount of certainty and some flexibility is required provided it does not jeopardise the Government or administration and further that administration should be gracefully informed to respond and acknowledge the flexibility of human mind and attitude.

38. The rule providing flexibility of three months before the voluntary retirement takes effect is based on sound public policy and is essentially an attribute of public employment. The broad statutory policy, in public employment, is of providing certain period to the employee to reflect upon his/her decision which at times is taken not consciously and well thought, but under certain stressed emotional surge and/or as knee-jerk reaction. A person who has served in public employment and has remained engaged in public service is intended to be given a sufficient breathing time to change his/her decision in his/her own lager sense in the event/opinion of his family

and other circumstances, which become prominent and govern thought process only when the decision to seek or not to seek voluntary retirement is based on rethinking in a rational and composed manner.

Even an application for preponement as provided under the rule in hand, cannot be accepted mechanically, but only with approval of the authority. That means, at all stages of dealing with an application for voluntary retirement from prospective date or prayer for preponement, the same are required to be considered from the administrative point of view. As held by the Hon'ble Supreme Court, a prayer for voluntary retirement before it becomes effective needs consideration and refusal may follow only when it results in administrative inconvenience.

39. On aforesaid consideration, even if administrative convenience and other relevant factors prompt the employer to accept the application for voluntary retirement, putting a complete embargo on the choice of the employee to withdraw his/her application even before the effective date comes into operation, without there being any compelling circumstances as to how acceptance of withdrawal of voluntary retirement may lead to administrative inconvenience, only on the basis that prayer for voluntary retirement has been accepted and communicated, renders the scheme suffering from manifest arbitrariness and unfairness. As and when application for withdrawal of voluntary retirement is made, as long as the effective date has not arrived and retirement not taken effect resulting in termination of jural relationship of master and servant, there is no reason why, in the absence of adequate determining principle put forth before the Court, such a rule of putting complete embargo on withdrawal of

application for voluntary retirement, once it is accepted though effective date has not arrived, should not be considered on relevant aspects. Provision mandating application of mind by the competent authority to grant or not to grant approval either for preponement of the effective date or even approval of voluntary retirement saves the provision from being irrational or unreasonable and to say, from manifest arbitrariness. The determining principle is administrative inconvenience. There may be cases where proceedings for recovery for financial loss or departmental action on charges of grave misconduct, serious allegation of corruption is pending. There may be many facets of administrative inconvenience and no exhaustive list thereof may be outlined. Competent authority may refuse to grant prior approval. But there is no determining principle either stated in the rule or in reply behind mechanical rejection of application for withdrawal merely because it was accepted and communicated, when the effective date had not yet arrived and jural relationship still continued.

In the present case, the young son of the petitioner committed suicide. This by all means was indeed a great mental shock to the petitioner sinking him in great deal of sorrow and depression, substantially effecting reasoned thought process which led to submission of application for voluntary retirement from service, an outcome of depressive overtone. The petitioner took some time to come out of the said grief before he could emerge out of such a situation and regain a composed and rationale thinking and reflection on the decision which he had taken in a state of despair.

Present case, on facts, tests the provision impugned in one kind of extreme circumstances, where the provision has failed to satisfy

the test of fairness, reasonableness and rationality, on the touchstone of Article 14 of the Constitution of India.

In an appropriate case, when it is found that allowing withdrawal of application for voluntary retirement even after acceptance thereof would not lead to any administrative inconvenience or it would not be against public interest, refusal thereof would amount to mechanical exercise of power, de hors and without reference to any relevant consideration. In a given case, it may be that after an application for withdrawal of voluntary retirement, after acceptance and communication thereof but before effective date, is made, there may not be any administrative inconvenience for employer. Therefore, instead of putting complete embargo on the right to seek withdrawal of voluntary retirement, it would have been better to continue such a right subject to prior approval of the authority as is required to be done even while considering application for voluntary retirement and in the matter of considering an application for preponement of the date of voluntary retirement.

40. In the reply filed by the respondents, no adequate determining principle has been put forth in support of the impugned proviso. Rather impugned proviso makes a marked departure from the scheme of prior approval provided in other parts of the provisions contained in Rule 50 of the Rules of 1996.

41. In view of above analysis and operative reason to arrive at a conclusion that proviso to sub-rule (4) of Rule 50 of the Rajasthan Civil Services (Pension) Rules, 1996 suffers from manifest arbitrariness, we consider present to be a case where such a provision is required to be read down to save its constitutionality.

As held by the Hon'ble Supreme Court in the case of **Independent Thought Vs. Union of India & Another (2017) 10 SCC 800**, the Court can either hold the law to be totally unconstitutional and strike down the law or the Court may read down the law in such a manner that the law read down does not violate the Constitution. In this regard, it is profitable to refer to the observations of the Hon'ble Supreme Court made in para 168 of the aforesaid judgment as below:

> *"**168**. Therefore, the principle is that normally the courts should raise a presumption in favour of the impugned law; however, if the law under challenge violates the fundamental rights of the citizens, the law is arbitrary, or is discriminatory, the courts can either hold the law to be totally unconstitutional and strike down the law or the court may read down the law in such a manner that the law when read down does not violate the Constitution. While the courts must show restraint while dealing with such issues, the court cannot shut its eyes to the violations of the fundamental rights of the citizens. Therefore, if the legislature enacts a law which is violative of the fundamental rights of the citizens, is arbitrary and discriminatory, then the court would be failing in its duty if it does not either strike down the law or read down the law in such a manner that it falls within the four corners of the Constitution."*

In the aforesaid case, the issue before the Hon'ble Supreme Court was "whether sexual intercourse between a man and his wife being a girl between 15 and 18 years of age is rape?"

In the aforesaid case, legality and constitutional validity of Exception 2 to Section 375 IPC was under challenge. While holding that Exception 2 to Section 375 IPC insofar as it relates to a girl child below 15 years is liable to be struck down, the same was read down. The Hon'ble Supreme Court read down the age of 15 years to 18 years.

42. On the basis of aforesaid analysis, we are inclined to read down proviso to sub-rule (4) of Rule 50 of the Rajasthan Civil Services (Pension) Rules, 1996 in the manner that even after acceptance of application for voluntary retirement and communication thereof, if an application for withdrawal of voluntary retirement is made prior to the effective date of retirement, the application will have to be considered on its own merits as also on consideration of administrative inconvenience and application for voluntary retirement may be permitted to be withdrawn in appropriate case with the prior approval of the appointing authority. Merely because, application for voluntary retirement was accepted and decision thereof communicated, the application for withdrawal of voluntary retirement should not be rejected at the threshold without application of mind to the relevant aspects of administrative inconvenience. It goes without saying that once the effective date of voluntary retirement arrives at without any application for withdrawal of voluntary retirement having been made, voluntary retirement would become effective and no prayer for withdrawal of voluntary retirement would be considered under any circumstances.

43. Writ petition is, accordingly, allowed. Order passed by the appointing authority rejecting application for withdrawal of prayer of voluntary retirement is set aside. Case is remanded back to the appointing authority for due and proper consideration of the application for withdrawal of voluntary retirement. However, in the event, the appointing authority decides not to grant approval to the application for withdrawal of voluntary retirement, the order must speak the reasons referable to administrative inconvenience as on

the date of submission of application for withdrawal of the prayer for voluntary retirement.

(MUNNURI LAXMAN),J **(MANINDRA MOHAN SHRIVASTAVA),CJ**

122-DivyaP/Jayesh/-Manoj Narwani