

(2011) 03 GUJ CK 0150

In the Gujarat High Court

Case No : Special Civil Application No. 6255 of 2001

Anil Kumar Bhavanishankar Mehta

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Gujarat Civil Services (Pension) Rules, 2002 — Rule 47, 48, 49
Revised Pension Rules, 1950 — Rule 8

Citation : (2011) 52 GLR 1317 : (2011) 2 GLR 1317

Hon'ble Judges : J.B. Pardiwala, J

Bench : Single Bench

Advocate : Biren A. Vaishnav, for the Appellant; V.S. Pathak, A.G.P. for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

J.B. Pardiwala, J.—By way of this petition, the Petitioner has prayed for grant of the following reliefs:

(A) allow this writ petition and declare that the Petitioner has retired from service and the Government may please be directed to hold him so;

(AB) quash and set aside the impugned order dated 29-11-2002 as being illegal, arbitrary and contrary to law;

(AC) declare that the Petitioner be treated to have voluntarily retired from service with effect from 2-2-2000 in accordance with the communication dated 2-11-1999 treating the same to be an application made to be effected prospectively and direct the Respondents to release the terminal benefits payable to the Petitioner on and from the date of retirement i.e. on and from 2-2-2000.

2. Brief facts relevant for the purpose of deciding the present petition can be summarised as under:

(1) The Petitioner was serving as a Colour Offset Machineman at the Government

Press, Bhavnagar.

(2) His date of birth is 23rd February, 1945 and his date of appointment in service is 15th April, 1963.

(3) On 7th October, 1995 the Petitioner applied for "No-Objection Certificate" to go abroad.

(4) On 10th October, 1995, "No-Objection Certificate" was issued by the concerned authority.

(5) The Petitioner applied for Earned Leave for the period from 21st July, 1997 to 17th November, 1997. Leave was sanctioned vide order dated 24th December 1997. Thereafter, he applied for first extension of leave vide application dated 16th December, 1997 for the period from 18th November, 1997 to 17th March, 1998.

(6) A query was raised by the department regarding the aforesaid period of leave. On 9th February, 1998, the Petitioner answered the query and clarified.

(7) Vide application dated 13th April, 1998 the Petitioner once again applied for second extension of leave for the period from 18th March, 1998 to 15th July, 1998.

(8) The department, vide letters dated 17th July, 1998 and 10th December, 1998, asked for clarification from the Petitioner regarding the leave and asked the Petitioner to report for duty.

(9) The Petitioner applied for third extension vide application dated 9th December, 1998 for the period from 11th October 1998 to 7th February, 1999.

(10) The Petitioner applied for fourth extension vide application dated 29th July, 1998 for the period from 16th July, 1998 to 12th November, 1998.

(11) The department once again sent reminders dated 10th May, 1999 and 7th September, 1999.

3. It is the case of the Petitioner that his mother and sister are in U.S.A. and his sister was diagnosed with cancer. There was nobody to look after them in U.S.A., therefore, the Petitioner and his brother both had to leave for U.S.A. and they stayed there for a long time. As the Petitioner realised that it was difficult for him to return to India leaving behind his ailing sister and mother, the Petitioner decided to seek voluntary retirement as he had already completed 20 years of service on 14th April, 1983 and 35 years of service on 2nd November, 1999. The Petitioner sent a notice for voluntary retirement dated 2nd November, 1999 (Annexure "A" to the petition), wherein the Petitioner has stated that he has completed 35 years of pensionable service and would like to voluntarily retire from service. He also stated in the application that he is giving three months' notice and would like to retire from service from 1st April, 1999.

4. It appears that no decision was taken on this application of the Petitioner,

praying for voluntary retirement and there was no communication in this regard of any nature to the Petitioner. For the first time vide order dated 24th April, 2000, the Petitioner was informed that his request for voluntary retirement has not been acceded. Record further reveals that the Petitioner was served with a charge-sheet dated 8th May, 2000 for the alleged act of misconduct for remaining absent from duty unauthorisedly. The inquiry proceeded ex-parte in the absence of the Petitioner, resulting into an order of compulsory retirement dated 29th November, 2002.

5. I have heard learned Counsel Mr. Biren Vaishnav for the Petitioner and learned A.G.P. Mrs. V.S. Pathak for the Respondent-State.

6. Learned Counsel for the Petitioner would submit that the State Government, under the Scheme introduced by it on 3rd February, 1978, gave an option to all Government servants including Class-IV employees to retire after completion of 20 years of qualifying service with the only condition of giving three months' notice to the appointing authority. Relying on this particular Government Resolution, the Petitioner requested the Respondents to permit him to voluntarily retire from service with effect from 1st April, 1999 after the notice period expires. However, the authorities failed to take notice of the request of the Petitioner and took no decision until 11th April, 2000. It appears that on 11th April, 2000, decision was taken not to permit the Petitioner to voluntarily retire and the Petitioner was accordingly informed vide order dated 24th April, 2000.

7. It appears that the learned Counsel is relying upon the Government Resolution dated 3rd February, 1978, which provides for voluntary retirement for all Government servants including Class-IV employees having completed 20 years of service.

8. To my mind, the Petitioner need not rely upon this Government Resolution because on the date of notice for voluntary retirement he had already put in 35 years of service. His case was squarely covered by Rule 8 of the Revised Pension Rules, 1950, which reads as under:

A Government servant may retire from service any time after completing 30 years' qualifying service provided that he shall give in this behalf notice in writing to the appropriate authority, at least three months before the date on which he wishes to retire. Government may also require a Government servant to retire any time after he has completed 30 years' qualifying service provided that the appropriate authority shall give in this behalf a notice in writing to the Government servant, at least three months before the date on which he is required to retire.

9. It appears that it is not in dispute that the Petitioner had completed 35 years of service on the date of his notice for voluntary retirement. The rule provides liberty to the Government employee to retire after completion of 30 years of service. In the same manner, it also gives liberty to the appointing authority to retire such Government employee if such Government employee has completed

30 years of service. The only requirement as per the rule is that the Government servant has to give notice at least three months in writing to the appointing authority before the date on which he intends to retire and the same is the requirement for appointing authority to serve notice to the Government employee, if he is to be retired.

10. On a plain reading of Rule 8, it transpires that the right given to the Government employee or to the appointing authority to put an end to the service upon completion of 30 years of service does not require acceptance of notice by the appointing authority or acceptance of notice by the Government employee. Such rights are to operate independently but subject to the discretion by the Government employee or by the appointing authority to be exercised before issuance of notice.

11. It is not the case of the Respondents-authorities that the Petitioner has not completed 30 years of service on the date when the notice was served. Therefore, in view of the aforesaid admitted position that the Petitioner did complete 30 years of service on the date when the notice was served for voluntary retirement, the notice will start operating from the date on which it is issued and the Petitioner would be entitled to retire from the date mentioned in the notice, which, in the present case, is 1st April, 1999.

12. It appears that the Respondents-authorities have proceeded on the basis that acceptance of such notice is must by the department and in absence of any such acceptance, there is compulsion on the part of the Government employee to continue in service.

13. It appears that the Respondents-authorities proceeded on the footing that the Petitioner was guilty of misconduct for remaining unauthorisedly absent from duty for a long time, and therefore, proceeded to initiate departmental inquiry in this regard and imposed penalty of compulsory retirement.

14. In view of the aforesaid interpretation of Rule 8 of the Rules, since there would be automatic cessation of relationship of employer and employee upon the expiry of the said notice period of three months, and when there is no requirement of acceptance of such notice, the objection raised can hardly be sustained in the eye of law. It is also an admitted position that no inquiry whatsoever was pending against the Petitioner at the time when the notice for voluntary retirement was given. Therefore, in any case, when no departmental inquiry whatsoever was pending against the Petitioner and the Petitioner had opted for voluntary retirement, and in view of Rule 8 of the Revised Pension Rules, 1950 governing the field and in view of the expressed language of Rule 8, it can be said that the Petitioner stood retired from Government service on 1st April, 1999.

15. Reliance is placed on the judgment of this High Court rendered by learned Single Judge (Coram: Jayant Patel, J.) in Special Civil Application No. 8352 of 2006 dated 27th December, 2007. In that case, learned Single Judge was

considering Rule 47 of the Gujarat Civil Services (Pension) Rules, 2002. It would be expedient to state here that Rule 47 of the Gujarat Civil Services (Pension) Rules, 2002 is pari passu to Rule 8 of the Revised Pension Rules, 1950, which was applicable in the case of the present Petitioner at the relevant point of time. In almost identical fact situation, the learned Single Judge held as under:

4. It appears that it is not in dispute that the Petitioner has completed 30 years of service in Government. Rule 47 of the Rules reads as under:

47. Retirement on completion of thirty years" qualifying service:

(1) A Government employee may retire at any time after completion of thirty years" qualifying service, or he may be required by the appointing authority not lower in rank than that of appointing authority to retire in the public interest:

Provided that -

(a) A Government employee shall give a notice of at least three months in writing to the appointing authority before the date on which he intends to retire; or

(b) the appointing authority shall give a notice of at least three months in writing to a Government employee before the date on which he is required to retire in the public interest.

(2) A Government employee, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall not be allowed to withdraw his voluntary retirement subsequently except with the approval of the appointing authority:

Provided that -

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

Explanation: Qualifying service of thirty years referred in Sub-rule (1) means qualifying service excluding extraordinary leave sanctioned in the entire service of an employee.

5. The aforesaid Rule provides liberty to the Government employee to retire after completion of 30 years of service. In the same manner, it also gives liberty to the appointing authority to retire such Government employee if such Government employee has completed 30 years of service. The only requirement as per the proviso is that the Government servant has to give notice at least three months in writing to the appointing authority before the date on which he intends to retire and the same is the requirement for appointing authority to serve notice to the Government employee, if he is to be retired in the public interest. Sub-rule (2) is for prohibition against withdrawal of such voluntary retirement in certain circumstances, which is not the subject-matter of the present petition. The pertinent aspect is that if the language of the Rule 47 is considered in light of

Rules 48 and 49, wherein the Government servant can make application for retirement upon completion of 20 years or 25 years, as the case may be, requirement as per Rules 48 and 49 is that such notice of voluntary requirement given under Sub-rule (1) of Rule 48 and Sub-rule (1) of Rule 49 requires acceptance by the appointing authority, subject to the proviso that if the acceptance is not granted within the specified period as per the said Rules, it is deemed as granted. Such is not the language in Rule 47. Therefore, on a plain reading of Rule 47, it transpires that the right given to the Government employee or to the appointing authority to put an end to the service upon completion of thirty years does not require acceptance of notice by the appointing authority or acceptance of notice by the Government employee. Such rights are to operate independently, but subject to the discretion by the Government employee or by the appointing authority to be exercised before issuance of notice for such purpose as per Rule 47.

16. In view of the aforesaid observations and conclusion, the subsequent proceedings initiated by the Respondents for not joining the duty including that of charge-sheet, departmental inquiry and imposition of penalty of compulsory retirement would not survive and cannot be maintained.

17. It appears that one of the grounds raised on behalf of the Respondents is that the Petitioner had to join the duty but he did not join the duty and his leave was not sanctioned from 16th December, 1997 till 1st April, 1999 i.e. the date on which the notice was given to effect the voluntary retirement. Therefore, at the most the department can consider the period from 16th December, 1997 to 1st April, 1999 as the leave to be adjusted against the Earned Leave or the balance leave of the Petitioner, and if there is no balance, such can also be treated as leave without pay. As per the provisions of Rule 8 of the Revised Pension Rules, 1950, subsequent proceedings for alleged misconduct cannot be maintained.

18. In view of the above, the impugned communication dated 20th April, 2000 is quashed and set aside and it is declared that the Petitioner stood retired as per Rule 8 of the Revised Pension Rules, 1950 from 1st April, 1999. The Respondents are further directed to process the pension papers of the Petitioner in light of the observations made hereinabove and to pay all retiral benefits to the Petitioner as if the Petitioner was in the cadre of Class-III, after adjustment of leave and the outstanding amount towards the housing loan, etc.

19. The aforesaid exercise shall be undertaken and completed within a period of three months from the date of receipt of the order of this Court.

20. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to cost.