
(1984) 02 GUJ CK 0005
In the Gujarat High Court

Bachu Laxman

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-02-1984

Acts Referred:

Fundamental Rules — Rule 56

Citation : (1984) 2 GLR 1336

Hon'ble Judges : I.C. Bhatt, J

Bench : Single Bench

Judgement

I.C. Bhatt, J.—The petitioner has filed the abovementioned Special Civil Application challenging the action of the Railway administration retiring the petitioner on completing the age of 58 years, on 31-3-1981. Case of the petitioner is that he being the employee of the erstwhile Bhavnagar State Railway, was entitled to serve upto 60 years which benefit remains vested in him and therefore he cannot be superannuated at the age of 58 years, as per the correct interpretation of Rule 2046 (F.R. 56) read with the rules of Ex-Bhavnagar State known as "Age Limit Rules of 1919".

2. At the time of admission of the abovementioned Special Civil Application, this Court on 23-3-1981 issued Rule and ad-interim relief against the retirement of the petitioner till 31-3-1983 was granted. This ad-interim relief was confirmed on 6-4-1981 by this Court. Thereafter this matter was pending. However, on 23-3-1983 the Railway Administration filed a Civil Application No. 1359 of 1983 for getting the interim relief vacated or suitably modified and that the petitioner be allowed to be retired on 31-3-83 as per the extant Railway Rules. This Court, therefore, by order dated 24-3-1983 vacated the interim relief with effect from 31-3-1983. However, the Special Civil Application was kept pending and is still pending till today.

3. As the pension and other retirement benefits, because of the pendency of the petition of the petitioner before this Court, are not being fixed by the Railway Administration, the petitioner has filed this Civil Application No. 4315 of 1983 for

a direction to the Railway Administration to fix the pension and to give other retirement benefits to the petitioner forthwith. On this Civil Application rule was made returnable on 16-1-1984. Thereafter this matter was adjourned from time to time.

4. The petitioner in the Civil Application has submitted that on retirement from service the petitioner is entitled to the amount of provident fund, gratuity, leave encashment, amount payable on maturity of the Group Insurance Scheme and also the fixation of pension in accordance with the Railway Rules. The petitioner submitted that he had approached the Railway authorities to fix his pension and other retirement benefits but he has been told by the Railway authorities that till his petition is pending in the High Court, his pension cannot be fixed and his service benefits cannot be finalised. Under these circumstances the petitioner has filed this Civil Application for the reliefs as stated in the Application. The petitioner has submitted that thus he is being denied the retirement benefits to which he is entitled to, forthwith. Learned Advocate for the petitioner has submitted before me that the petitioner should be allowed to withdraw the main petition to enable him to get retirement benefit immediately.

5. Learned Advocate Mr. R.M. Vin appearing for the Railway Administration submitted that the petitioner will be only entitled to the retirement benefits on the basis as if he retired from service on 31-3-1981 and not on the basis that he retired on 31-3-1983 even though the petitioner continued in service under the orders of this Court upto 31-3-1983 and has served the Railway Administration.

6. It is surprising to note that even though the Railway Administration has prayed in Civil Application No. 1359 of 1983 to vacate or suitably modify the interim order passed by this Court and to allow the Railway Administration to retire the petitioner on 31-3-1983 as per the extant Railway Rules, and got the interim relief vacated with effect from 31-3-1983, no action appears to have been taken for fixing the pension, gratuity and other retirement benefits to the petitioner. The Railway authorities are under the statutory obligation to give all the benefits to the petitioner on his retirement from service. It may be noted here that the petitioner was in the continuous service of the Railway Administration and the Railway authorities having allowed to work and having taken the work the petitioner till 31-3-1983, and the petitioner having continued in service under the orders of the Court till that date, the Railway Administration cannot now withdraw the benefits that have been granted to him. The Railway Administration cannot withdraw the benefits that accrued to the petitioner on the basis of the last pay drawn and the said benefits cannot be calculated as if the petitioner had retired on some earlier date. Even in other Government departments, if any employee is given extension his retirement benefits are counted on the basis of last drawn salary and not on any other basis. The petitioner having been continued on the same post with all benefits attached to the post now cannot be denied the retirement benefits on the basis of last salary drawn and the Railway Administration cannot take the stand that the petitioner

will be only entitled to the retirement benefits on the basis as if the petitioner had retired on some earlier date i. e. 31-3-1981. The Railway filed the above Civil Application only on 23-3-1983 to allow them to retire the petitioner with effect from 31-3-1983. Till that date the petitioner must have been given all the benefits of service as if he was in continuous service. The Railway Administration now cannot withdraw those benefits after having taken work from the petitioner till 31-3-1983 and for all purposes the petitioner will have to be treated in service of the Railway Administration upto 31-3-1983.

7. This Court in Special Civil Application No. 1336 of 1975 (Coram: D.A. Desai, J.) decided on April 25, 1977 in a similar situation directed the Railway Administration to give pension and other retirement benefits to the concerned employee on the basis of last pay drawn. In that judgment this Court observed as under:

...Now, that he is going out, the only concession which Mr. Bhatt wants which even in law would be legitimate to him is that he has continued to serve under the interim relief granted by the Court, the benefit that accrued to him on the basis of last pay drawn pension, various retirement benefits should not be withdrawn and he should not be refixed at the starting of the salary scale. Whether I like it or not, that is the law. Rules at present governing retirement benefits especially pension and gratuity refer to the average of 10 month's last salary. It is immaterial that he continued to enjoy the benefit under interim relief granted by the Court and for that he has been in receipt of this benefit. Therefore, the Railway Administration would not be entitled to withdraw the same. In other words, he would be entitled to pension and other retirement benefits on the pay that he would draw at present on 30-4-1977 when he would walk out as superannuated. With these observations the petition stands disposed of with no orders as to costs.

8. The relief which the petitioner wants in this Civil Application is that the petitioner has continued to serve under the interim relief granted by this Court and therefore, the various retirement benefits should be fixed on the basis of the benefits that accrued to him on the basis of last pay drawn and the retirement benefits should not be fixed on the basis that the petitioner had retired on some earlier date i.e. 31-3-1981. The Railway Administration now cannot deny the similar benefits to the petitioner who has been allowed to work upto 31-3-1983 and to whom all the benefits of salary and other consequential benefits must have been given by the Railway Administration. Having given salary and other benefits and having allowed the petitioner to work upto 31-3-1983 and having not taken any steps for getting the interim relief vacated upto the last stage, the petitioner now cannot be deprived of the benefits of service upto 31-3-1983 and consequently the petitioner will be entitled to get his pension and other service benefits fixed as per the extant rules as if the petitioner has retired on 31-3-1983. The petitioner continued to enjoy the benefits under the interim relief granted by the Court and as such he has been in receipt of those benefits.

Therefore, the Railway Administration would not be entitled to withdraw the same. The petitioner would be entitled to retirement benefits and other benefits on the basis of pay that the petitioner received on 31-3-83 and not as on 31-3-1981 and hence the petitioner will be entitled to get his pension fixed as if he retired from service on 31-3-1983.

9. In the result, I allow this Civil Application of the petitioner. The pension and other retirement benefits of the petitioner will be given as if he has retired from service on 31-3-1983. The petitioner is permitted to withdraw the above Special Civil Application and the same stands disposed of as withdrawn with no order as to costs. The petitioner has already retired from service on 31-3-1983 and still the petitioner has not been paid any amount towards the retirement benefits and even the pension has not been fixed till today, though the Railway authorities filed Civil Application No. 1359 of 1983 for permitting them to retire the petitioner with effect from 31-3-1983 and the petitioner in fact retired from 31-3-1983. The petitioner should have given by the Railway Administration his retirement dues and should have fixed the pension of the petitioner at the earliest. As this has not been done, I direct the Railway Administration to finalise the retirement benefits of the petitioner including gratuity and fixation of pension, as directed above, within three months from the date of receipt of the writ of this Court. The Railway authorities will furnish to this Court information regarding the steps taken by them to comply with the above order, at the end of three months. Civil Application is accordingly disposed of with no order as to costs.