

(2011) 03 GUJ CK 0004

In the Gujarat High Court

Case No : Letters Patent Appeal No. 534 of 2011 in Special Civil Application No. 7909 of 1999

Balaram Saghan Kshetra Samiti

APPELLANT

Vs

Kantaben Laljibhi Patel and Others

RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Constitution of India, 1950 — Article 217(1)

Citation : (2011) 2 GLR 1794

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : Jirga D. Jhaveri, for the Appellant; J.C. Vyas, for the Respondent

Judgement

V.M. Sahai, J.—We have heard Ms. Jirga D. Jhaveri, learned Counsel for the Appellant and Mr. Ashok Purohit holding brief of Mr. J.C. Vyas, learned Counsel for the Respondents. This Letters Patent Appeal has been filed challenging the judgment dated 4-8-2010 passed by the learned Single Judge in Special Civil Application No. 7909 of 1999.

2. The facts in brief are that the Respondent was serving as Principal since 1978 in Stree Adhyapan Mandir, Chitrasani, Taluka Palanpur, District Banaskantha which was managed by Balaram Saghan Kshetra Samiti, the Appellant. On 28-6-1999, the Respondent tendered an application seeking voluntary retirement which was to take effect from 30-9-1999. The Appellant sent a communication to the Respondent on 29-6-1999 informing the Respondent that the Appellant Trust had accepted the voluntary retirement application of the Respondent in the meeting of the Trust held in Bombay before 30-9-1999. The Appellant, on 27-9-1999 informed the Respondent District Primary Education Officer, Gandhinagar that the Respondent is withdrawing her application given on 28-6-1999 seeking voluntary retirement which was with effect from 30-9-1999 and she wants to continue in service. The letter of withdrawal was given to the District Primary Education Officer by the Respondent as when she approached

the Appellant for accepting the letter of withdrawal of voluntary retirement, the Appellant refused to accept it. Copy of the letter was sent to the Appellant also. The Respondent had no option, but to hand over the letter of withdrawal of voluntary retirement to the District Primary Education Officer and on 27-9-1999 and she had sent the letter of withdrawal of resignation by Registered A.D. Post. On 27-9-1999 application for withdrawal of resignation letter was also sent by Registered A.D. Post to the office of the Appellant but the Appellant did not accept delivery from the postal department. After withdrawing the voluntary retirement letter, the Respondent went on leave and resumed duty on 4-10-1999. The Respondent was prevented from signing the muster roll and she was informed that she has been relieved and her charge has been handed over to Anr. person.

3. The law in this regard is well settled that if voluntary retirement application is made which is to take effect from a future date, then before that date, the acceptance cannot be advanced by the Appellant and the Appellant could accept it on or after 30-9-1999. Before 30-9-1999 the Respondent has a legal right to withdraw her application for voluntary retirement. In the instant case, the Respondents have advanced the acceptance of voluntary retirement application. As it is clear from Annexure "B" to the writ petition which is a copy of communication signed by the Managing Trustee addressed to the Respondent to the effect that the voluntary retirement application given by the Respondent on 28-6-1999 is accepted on 29-6-1999, the very next date. This act of the Appellant was wholly illegal and in violation of law.

4. The Apex Court in Shambhu Murari Sinha Vs. Project and Development India Ltd. and Another, held in Para 18 that the law of voluntary retirement was a conditional one and before the date of voluntary retirement arrived, the application for voluntary retirement was withdrawn. Therefore, the jural relationship of employee and employer between the Appellant and the Respondent No. 1 would continue between the parties till the end. Applying the law laid down by the Apex Court, the jural relationship of the Appellant and the Respondent-employee would continue till 30-9-1999 and would not come to an end on 29-6-1999, when the Respondents have accepted the voluntary retirement application.

5. The Hon'ble Apex Court in Union of India v. Wing Commander T. Parthasarathy, 2001 (1) SCC 158 , held that, where resignation is tendered and is accepted by Respondent, in that case, after the date of acceptance, letter of resignation could not be withdrawn. But, where resignation is tendered by employee itself is conditional and it required acceptance of the competent authority, the resignation could not be accepted before that date arrives. It is always open to employee to withdraw his resignation as the request for acceptance of voluntary resignation was to take effect from a future date. The Constitution Bench of the Hon'ble Apex Court in Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, has held in Para 51, as under:

51. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office- tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective withdraw it, because the Constitution does not bar such withdrawal.

6. Similar view has been taken by the Hon''ble Apex Court in Balram Gupta Vs. Union of India (UOI) and Anr, Punjab National Bank Vs. P.K. Mittal, , Nand Keshwar Prasad Vs. Indian Farmers Fertilizers Cooperative Ltd. and Others, Andhra Bank v. K. Sudha Nagaraj, 1999 SCC (L&S) 793, Union of India v. Wing Commander T. Parthasarathy, 2001 (1) SCC 158 and Srikantha S.M. Vs. Bharath Earth Movers Ltd.,

7. From the aforesaid decisions of the Hon''ble Apex Court, it is clear that the law laid down by the Hon''ble Apex Court is that if the voluntary retirement has to take effect from future date, it would be open to the Respondent No. 1 to withdraw the application seeking voluntary retirement before the future date 30-9-1999 arrives and the voluntary retirement application could be withdrawn. The legal right to withdraw the prospective voluntary retirement application could not be denied to the Respondent.

8. According to the learned Counsel for the Appellant, the letter withdrawing the voluntary retirement was received by them on 1-10-1999, therefore, the Respondents took the decision of voluntary retirement with effect from 30-9-1999 cannot be accepted. The Respondent No. 1 went to the Appellant for submitting the application for withdrawal of her resignation which had been refused by the Respondent on 27-9-1999. The letter of withdrawal of voluntary retirement was submitted before the District Primary Education Officer on 27-9-1999. The letter withdrawing voluntary retirement was sent by Registered A.D. post which was refused by the Respondents. Therefore, since the voluntary retirement application was withdrawn by the Respondent No. 1 on 27-9-1999,

she continued in service and was wrongly denied her right to attend the institution by the Respondents. The letter withdrawing the voluntary retirement application could not have been refused to be accepted by the Appellant as it was sent before the jural relationship of employer-employee came to an end. The learned Single Judge took a correct view of the letter and the facts. We do not find any illegality in the impugned order passed by the learned Single Judge. The appeal deserves to be dismissed.

9. We modify the order of the learned Single Judge dated 4-8-2010 and direct the Appellant to permit the Respondent No. 1 to join her duties and she shall be paid all her salaries and other allowances with entire benefits of service for the entire period she was out of service till the date of her retirement, and thereafter, she shall be entitled to get all retiral benefits counting the above period as if she was in service.

10. With the aforesaid modification of the order of the learned Single Judge, this appeal stands finally disposed of.