

(2008) 02 GUJ CK 0066

In the Gujarat High Court

Case No : Letters Patent Appeal No. 198 of 2007 in Special Civil Application No. 2002 of 2005

Chandrikaben R. Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Citation : (2008) 02 GUJ CK 0066

Hon'ble Judges : R.M. Doshit, J;K.M. Thaker, J

Bench : Division Bench

Advocate : Pradeep Patel 1, for the Appellant; V.S. Pathak, Asst. Government Pleader for Respondents 1 - 3, 5 and Pinakin M. Raval, for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, J.—This Appeal preferred under Clause 15 of the Letters Patent arises from the judgment and order dated 21st July, 2006 passed by the learned Single Judge in above Special Civil Application No. 2002 of 2005. The appellant is the writ petitioner.

2. The appellant came to be employed as Junior Clerk cum Typist on ad-hoc basis in the Sarvoday Kendra (grant-in-aid institution) on 13th August, 1979. By order dated 27th February, 1980 made by the Manager of the concerned Sarvoday Kendra, the service of the appellant was made permanent. On 18th July, 1980, the State Government abolished the Sarvoday Project. By resolution dated 30th July, 1981 passed by the State Government, the State Government resolved, inter alia, that the permanent employees of the Sarvoday Kendra who had completed one year's service as on 31st March, 1981 would be absorbed in Panchayat service on ad-hoc basis on ex-cadre post at existing wages; such employees would not be entitled to the benefits of promotion or retirement, etc. Pursuant to the said resolution the appellant came to be absorbed in the service of the respondent Gandhinagar District Panchayat. By further Resolution dated

15th December, 1987 the State Government resolved to absorb the ex-cadre employees of the Panchayat (the former employees of the Sarvoday Kendras) in regular service of the Panchayat and to grant them benefit of promotion, regular pay-scale, leave, pension, etc. with effect from 1st April, 1987. It should be noted here that some of such employees had approached this Court by filing Special Civil Applications to claim that their earlier service prior to 1st April, 1987 under the Panchayat as well as under the Sarvoday Kendra shall be considered pensionable. The said petitions were allowed by this Court. It was held that the earlier service of such employees shall be considered pensionable.

3. In consonance with the above referred resolution, the appellant was absorbed in regular service of the District Panchayat, Gandhinagar from 1st April, 1987. It, however, appears that the appellant went on long leave of absence since November 1999. After expiry of the period of leave, the appellant did not report for duty and remained absent without leave until 2004. On 1st December, 2004, the appellant made application to the District Development Officer to allow her to take voluntary retirement from 11th November, 2003. By communication dated 15th December, 2004, the appellant was informed that she had not completed qualifying service. In answer to the said communication, on 16th December, 2004 the appellant insisted that her service since 1st April, 1979 in the concerned Sarvoday Kendra was pensionable and she having completed 20 years" service, she was entitled to take voluntary retirement. She requested to accept her resignation subject to her right to claim voluntary retirement. The said request also came to be turned down. The appellant, therefore, by communication dated 11th January, 2005 submitted resignation and paid a sum of Rs. 7,250/-, equal to one month's salary, to the District Panchayat in lieu of notice. The said resignation was accepted. The service of the appellant came to be terminated by resignation. Thereafter, she filed the above Special Civil Application No. 2002 of 2005 for a declaration that her service since 1st April, 1979 under the Sarvoday Kendra was pensionable and that she had voluntarily retired from service. She prayed that considering her pensionable service, she be paid pension and other terminal benefits. The petition has been dismissed by the learned Single Judge. The learned Single Judge has held that as the appellant had resigned from service, her claim for pension and other terminal benefits was unsustainable. The learned Judge has relied upon the judgment of the Hon"ble Supreme Court in the matter of UCO Bank and Others Vs. Sanwar Mal, to hold that the resignation and retirement are distinct. Resignation does not stand at par with the retirement for the purpose of pensionary benefits.

4. Mr. Patel has appeared for the appellant. He has assailed the judgment of the learned Single Judge. He has submitted that evidently the appellant had desired to take voluntary retirement. Accordingly, she had made application for voluntary retirement. The District Panchayat, however, under the erroneous belief that the appellant had not completed qualifying service, refused to accept the said application for voluntary retirement. In the circumstances, the appellant was compelled to submit her resignation. Such resignation should be treated as

voluntary retirement and the appellant shall be paid pension and other terminal benefits. In support of his submission, Mr. Patel has relied upon the judgments of this Court in the matters of *Rasubha Nitubha Jhala v. Division Controller GSRT and Anr.* 2004 (6) GHJ 669; *Udaykumar Thakorbhai Bhatt v. Industries Commissioner* 2003 GHJ 632 and unreported judgment of the Division Bench in the matter of *Chandulal M. Machhi v. State* [LPA 619 of 2000; decided on 26th December, 2000 (Coram: Mr. Justice J.N. Bhatt, as he then was and Mr. Justice D.P. Buch)].

5. In the matter of *Rasubha Nitubha Jhala*, the petitioner, a conductor in the respondent Road Transport Corporation, had submitted "voluntary resignation" which came to be accepted. When the Corporation refused to pay pensionary benefits, he approached this Court. The learned Single Judge was pleased to accept the claim of the petitioner. The learned Single Judge observed that the said petitioner had studied upto 9th standard and when he voluntarily resigned from service, what he meant was voluntary retirement. Ignorant of the niceties of the words, he had used the word resignation in place of the word retirement. Thus, the said petitioner was held to have voluntarily retired. The corporation was accordingly directed to pay him pension and other retiral benefits.

6. In the matter of *Chandulal M. Machhi* (supra), the appellant was the employee of a Non-Government grant-in-aid High School. He resigned from service on 13th June, 1971. Thereafter, in December, 1971 the State Government introduced pension scheme for the employees of the Non-Government grant-in-aid Schools. The said pension scheme was made applicable to all who retired from service on 1st April, 1969 or thereafter. That appellant raised demand for pension in the month of November, 1991 which came to be rejected by the State Government as the appellant had resigned from service and had not retired from service. While allowing his claim, the Court observed that, expression retirement has variety of shades and interpretation of the department in treating the quitting of service by the original petitioner as resigned and not retired, does not go hand-in-gloves with the pension policy and the principles of Welfare State, to which the State had avowed and the same have been highlighted in the Government Resolution. In the matter of *Udaykumar Bhatt* (supra), the learned Single Judge has relied upon the judgment of the Hon'ble Supreme Court in the matter of *J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others*, ; judgment of the Delhi High Court in the matter of *Ashwani Kumar Sharma v. Oriental Bank of Commerce* 2003 (2) LLJ 575 wherein the learned Judge has observed that, Resignation and voluntary retirement stand on slightly different footing but the effect and substance thereof is not of much significance.

7. We are of the opinion that the above referred judgment in the matter of *Rasubha Nitubha Jhala* has no applicability on the facts of the present case. In that case the learned Judge has held that the petitioner was ignorant and that when he applied for "voluntary resignation", he, in fact, had applied for "voluntary retirement". That is not the case in the present matter. The appellant

was conscious of the distinction between retirement and resignation and of her rights also. When her application for voluntary retirement was not accepted, she could have challenged the said action. Instead, she opted to get out of the service by tendering resignation and by paying one month's salary in lieu of notice. The judgment in the matter of Udaykumar Thakorbhai Bhatt (supra) is evidently per incuriam. The learned Judge had not noticed the binding judgments of the Division Bench of this Court in the matter of Premji Khanji Masani Vs. United India Insurance Co. and Others, and in the matter of H.M. Thakker v. Sr. Divisional Manager [Letters Patent Appeal No. 574 of 1997 decided on 5th November, 1998 (Coram: MR. Justice C.K. Thakker, as he then was and MR. Justice A.L. Dave)] and the earlier judgment of one of us (R.M. Doshit, J.) in the matter of Lucious S. Christian Vs. Union of India and Others, In the aforesaid matters, the question was whether the resignation submitted by the concerned employee amounted to retirement entitling the concerned employee to pensionary benefits. Considering the judgment of the Hon'ble Supreme Court in the matter of J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others, and the other judgments of the Hon'ble Supreme and this Court, the Bench has held the other way that, in order to constitute voluntary retirement from service, giving of notice of not less than ninety days in writing by an employee to the appointing authority and acceptance of the same by the appointing authority, are essential ingredients. More over, an employee who has elected to retire voluntarily and has given necessary notice to the effect to the appointing authority is precluded from withdrawing his notice, except with the specific approval of the authority. The qualifying service of an employee retiring voluntarily stands increased by a period not exceeding five years. All these elements are not present in a case where an employee resigns from service.... Under the circumstances, resignation of an employee cannot be equated with his voluntary retirement from service. In Letters Patent Appeal No. 574 of 1997, it has been held that, But it cannot be gainsaid there is distinction between voluntary retirement and resignation. The judgment in the matter of C.M. Machhi (supra) is ex-facie contrary to the above referred Hon'ble Supreme Court judgment. The law laid down in the said judgment is not a good law.

8. We are of the opinion that the appellant had indeed resigned from service with full knowledge of its consequence. In view of these binding judgments of the Division Bench of this Court, and the judgment of the Hon'ble Supreme Court in UCO Bank and Others Vs. Sanwar Mal, we are inclined to hold that by resigning from service, the appellant forfeited her right to pension. The learned Single Judge has rightly rejected the appellant's claim for pensionary benefit.

9. In above view of the matter, we dismiss the Appeal in limine. Parties will bear their own cost.