
(1990) 09 GUJ CK 0002
In the Gujarat High Court

Iqbalmohmad Yusufali Patel

APPELLANT

Vs

Deputy District Development Officer (Revenue)

RESPONDENT

Date of Decision : 17-09-1990

Acts Referred:

Citation : (1991) 2 GLR 719

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Judgement

R.A. Mehta, J.—The petitioner was a work-charge Junior Clerk in Bharuch District Panchayat. He was given such appointment by a letter dated 18th May, 1979, annexed and marked as Annexure "A" to the petition. In January 1982 the petitioner went on leave. In para 3 of the petition it is stated that initially the petitioner had asked leave for few months on medical ground and then the petitioner had thereafter sent some other report through post, but he could not resume duty for a considerable period. The petitioner further urgent submits that he had some severe social problems and domestic problems and he was a little bit mentally disturbed and imbalanced state of mind and therefore, he could not resume duty thereafter. And ultimately after about 7 years he tried to resume duty in December, 1989 and at that time he was not given posting or he was not given any work. The petitioner therefore, had given a written application on 26th March, 1990, as Annexure "B" to the petition. In that application he has stated that as he was absent for a long period and his post has been filled in, he may be given appointment to any other post of Junior Clerk.

2. The learned Counsel for the petitioner submits that he was in the employment of the respondent and the respondent has never terminated that employment and therefore, the petitioner still continues in the employment and the refusal of the respondent to give work and posting is illegal. Reliance have been placed on the judgment of the Supreme Court in the case of Jai Shanker Vs. State of Rajasthan, . In that case a permanent Government servant had gone on leave and overstayed by three months. His leave expired on August 13, 1950 and he

was told that no more leave would be granted. His leave application of 1st November, 1950 was supported by a Medical Certificate. He made further leave application on November 3, 1950 asking for leave till November 11, 1950. To all these applications no reply was received, but on 4th November, 1950 he received a communication that he was discharged from service from August 13, 1950. It is seen that the petitioner had been asking for leave though the leave was refused and he had remained absent without leave for a period of about 3 months only and during these period, leave applications were made from time to time, including the one dated Nov. 3, 1950 manifesting his clear intention to continue to remain in the employment and the order passed by the employer for terminating his service was challenged. In that context the Supreme Court held that the petitioner would not be considered to have sacrificed and abandoned his employment. The Supreme Court held the order of the Government was illegal when the incumbent was willing to serve. In the present case there is nothing to show that for all these years the petitioner was willing to serve. He has never manifested his intention to continue in the employment. He has been absent since January, 1982 and after 7-8 years he wanted to get back the employment in the name of resuming duty.

3. The petitioner also relied upon the judgment of *Mafatlal Narandas Barot v. Divisional Controller, State Transport Mehsana* AIR 1966 SC 1364. In that case also the appellant was a permanent employee of the Gujarat State Road Transport Corporation. He had applied for leave for 15 days on 15th January, 1962. On 16th January, 1962 he was transferred and he was directed to join duty at the place of his transfer. On 31st January, 1962, on that date the employee applied for extension of leave on medical grounds, but his request was refused. On February 15, 1962 he was directed to report on duty within 48 hours, failing which he was warned that he would be removed from the service. On 3rd March, 1962 the employee intimated his inability to join duty on medical grounds, enclosing a medical certificate and by order dated 9th March, 1962 his services were terminated with effect from January 16, 1962 on the ground of long absence. In this case also it is manifest that the employee was a permanent employee and was absent without leave for a period of about 10 days when he was continuing to apply for leave on medical ground and the request was refused. Thus, intention of continuing in service is clearly manifest on the part of the petitioner and the order of termination by employer was held to be illegal.

4. As against that, the facts of the present case are the petitioner who was working as a work-charge Junior Clerk, absented for a long period of 7 to 8 years without manifesting any intention to continue the employment and without seeking leave for all these years, he has remained absent for 7-8 years, which indicates his intention to abandon service by his own voluntary act.

5. The learned Counsel for the petitioner also relied upon the judgment of *Punjab & Haryana High Court* in the case of *Gurdial Singh v. State of Haryana* reported in 1984(1) SLR 66. In that case the question was of seniority fixation, as a result

of the judgment of the Court. There was some dispute about absence from duty from October, 1967 to November, 1972, meaning thereby that he worked neither as an Inspector nor as an Assistant Consolidation Officer during this period. In December, 1972 he joined as Asstt. Consolidation Officer and continued as such upto May, 1977. The facts of the case have no bearing or relevance to the facts of our present case.

6. It is clear that the petitioner has by his own act of long absence for 7-8 years sacrificed and abandoned his employment. All these years he has not manifested any intention to remain in service. Therefore, it cannot be said that the empower has terminated the,service and therefore there is no act of employer which can be challenged.

7. The petitioner has lost his service by his own voluntary act and hence, the petition is dismissed.