(1998) 02 GUJ CK 0028

In the Gujarat High Court

Case No : Special Civil Application No. 3830 of 1997

Jayantkumar Atmaram Bhatt APPELLANT

Vs

Gujarat State Road Transport Corporation and Another RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:

Citation : (1998) 2 GLR 1001

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : H.K. Rathod, for the Appellant; Y.S. Lakhani, for the Respondent

Judgement

S.K. Keshote, J.—Rule. Mr. Lakhani waives service of Rule on behalf of respondents. The matter is taken up for final hearing as the point

involved in this case is squarely covered by decision of the Honourable Supreme Court.

2. The petitioner, a Security Officer of the Gujarat State Road Transport Corporation, filed this Special Civil Application and prayer has been

made for quashing and setting aside the decision dated 3-7-1996 of the respondent No. 1, rejecting the application of the petitioner for withdrawal

of his application dated 19-6-1996 of voluntary retirement. The petitioner, vide his notice application dated 25th April, 1996, sought voluntary

retirement from the services of Corporation with effect from 31st July 1996. The respondent-Corporation, vide its order dated 12-6-1996,

accepted the application of the petitioner for going on voluntary retirement with effect from 31st July 1996. The order dated 12th June, 1996, as

per the case of petitioner was not served upon him upto 24th June, 1996. The petitioner submitted an application on 19th June, 1996 to the respondent No. 1 seeking therein withdrawal of his claim for voluntary retirement under his notice-application dated 25th April, 1996. That

application of the petitioner came to be rejected vide communication dated 6th July, 1996. The order dated 12th June, 1996 came to be modified

by respondent under its order dated 30th August, 1996, wherein it has been ordered that the order dated 12h June, 1996 be considered to have

been passed under S.R. 51-A and not under S.R. 51. The petitioner sent a notice dated 4-2-1997 to the respondent but that notice was not

replied. Hence this Special Civil Application.

3. The learned Counsel for the petitioner contended that the order accepting the application of the petitioner to go on voluntary retirement though

was passed on 12th June, 1996, the same would have been effective from 31st July 1996, and as such, before the later date, the petitioner has all

the right to withdraw his application for voluntary retirement. Once the petitioner has exercised his right to withdraw the application for voluntary

retirement before the affected date of voluntary retirement, the respondent has to accept the same. In support of this contention, the learned

Counsel for the petitioner placed reliance on two decisions of the Honourable Supreme Court and one of this Court, details of which are as under

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1. Punjab National Bank v. P. K. Mittal, - 1989 I CLR 364.

2. Balram Gupta v. Union of India & Anr. - 1987 II CLR 412.

3. N.A. Vasava Vs. Chief Refinery Co-ordinator, Indian Oil Corporation Ltd. and Another, .

It has next been contended that the petitioner is entitled to get the encashment of earned leave which was in his credit with interest thereon at the

rate of 18%. Though the petitioner has submitted an application for encashment of leave, the same has not been decided.

4. The learned Counsel for the respondent, on the other hand, does not dispute the legal position that the petitioner has a right to withdraw his

notice seeking voluntary retirement before the affecting date of voluntary retirement, but contended that the order dated 12th June, 1996 has been

modified vide order dated 30th August, 1996 and the petitioner was ordered to be retired under S.R. 51-A and as such, the authorities relied

upon by the learned Counsel for the petitioner are of little help to the petitioner.

So far as the claim of petitioner for encashment of earned leave is

concerned,'' the learned Counsel for the respondent submitted that as per the entitlement of the petitioner, it has to be given and still if the petitioner

considers that his full entitlement has not been given, it is open to the petitioner to approach the Corporation and the Corporation shall decide the

same in accordance with law.

5. I have given my thoughtful considerations to the submissions made by learned Counsels for the parties.

6. The Service Regulation No. 51-A of the Corporation gives right to he officer/ employee of the Corporation of the category, as mentioned

therein, to seek voluntary retirement subject to fulfilment to condition of qualifying services and after giving three months'' notice to the Corporation.

If we go by the order dated 30th August, 1996, it is clear that under the order dated 12th June, 1996, a mistake has been committed which has

been rectified. The Service Regulation No. 51 of the Corporation provides for compulsory retirement of the officer/employee but it is not the case

of compulsory retirement of the petitioner, but a case where the petitioner has prayed for voluntary retirement from the services of the Corporation

and rightly, under the order dated 30th August, 1996, that mistake has been corrected and it has been made clear that the petitioner is allowed to

go on voluntary retirement as per the provisions of Service Regulations No. 51-A. So the contention made by learned Counsel for the respondent

that the order dated 30th August, 1996 has modified the earlier order dated 12th June, 1996, is of no consequence.

7. It is not in dispute that the petitioner has submitted application for withdrawal of his notice-application for voluntary retirement with effect from

31st July, 1996 before 31-7-1996. It is true that the notice-application of the petitioner to go on voluntary retirement has been accepted by the

Corporation vide its order dated 12th June 1996 and it is equally true that mentioning of Service Regulation No. 51 is only an error, but this

voluntary retirement would have been effective from 31st July, 1996. The relationship of employer and employee, i.e., of the Corporation and the

petitioner would have come to an end only from 31st July, 1996 and till that date, this relationship subsists. Though the order accepting the

application of the petitioner to go on voluntary retirement has been passed on

12th June 1996, it would have been effective only from 31st July,

1996 and before this effective date, the petitioner has all the right to withdraw his application for voluntary ''retirement and if such a prayer has

been made, then the respondent-Corporation could not have taken shelter of the order dated 12th June, 1996. The matter is squarely covered by

judgment of the Honourable Supreme Court and of this Court, on which reliance has been placed by learned Counsel for the petitioner.

8. In the result, this Special Civil Application succeeds and the same is allowed and the order of the respondent-Corporation dated 3rd July, 1996,

Annexure ""H"" to this Special Civil Application, is quashed and set aside, and it is hereby declared that the petitioner shall be deemed to be

continued in service till 31st August 1997, on which date he had attained the age of superannuation as per his own case. The petitioner shall be

entitled for all legal consequential benefits following from quashing of the said order. The respondent-Corporation is directed to give all

consequential benefits legally available to the petitioner within a period of two months from the date of receipt of copy of this order. All his

retirementary benefit may also be accordingly revised. So far as the claim of the petitioner regarding the encashment of earned leave is concerned,

it is suffice to say that the petitioner has a right to move an application to the respondent-Corporation and if such an application is made then the

same may be decided by the Corporation within a period of two months from the date of receipt thereof and where the claim of petitioner

regarding encashment of earned leave is not acceptable, then a reasoned order may be passed and a copy of the same may be sent to the

petitioner by registered post A.D. Rule made absolute in aforesaid terms with no order as to costs.

