

(2019) 01 GUJ CK 0019

In the Gujarat High Court

Case No : R/Special Civil Application No. 7296 Of 2011

Madhuri Sharma

APPELLANT

Vs

Oriental Insurance Company Ltd

RESPONDENT

Date of Decision : 08-01-2019

Acts Referred:

Indian Contract Act, 1872 — Section 4, 5

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 12

Citation : (2019) 01 GUJ CK 0019

Hon'ble Judges : A. J. Shastri, J

Bench : Single Bench

Advocate : Sangheeta Pahwa, Dakshesh Mehta

Final Decision : Dismissed

Judgement

1. The present petition under Article 226 of the Constitution of India has been filed by the petitioner for the purpose of seeking following reliefs:

"(A) YOUR LORDSHIIPS be pleased to issue appropriate writ, order or direction, quashing and setting aside the impugned order dated 06.08.2010 after the petitioner has withdrawn the same and the action of the respondent of not allowing the petitioner to resume her duties as being unjust, unreasonable, arbitrary and violative of Articles 14 and 16 of the Constitution of India, in the interest of justice;

(B) YOUR LORDSHIPS be pleased to direct the respondents to allow the petitioner to resume her duties, pending the admission, hearing and final disposal of this petition, in the interest of justice;

(C) YOUR LORDSHIPS be pleased to grant such other and further reliefs, as may be deemed fit by this Hon'ble Court, in the interest of justice."

2. The case of the petitioner is that the petitioner was appointed as an Assistant Administrative Officer vide letter dated 12.2.1988 and was posted at New Delhi.

In the month of December, 1999, the petitioner came to be transferred to Mumbai and was later on promoted as Deputy Manager and the petitioner worked as such at Mumbai till November, 2008. It is further the case of the petitioner that the petitioner was promoted as Manager vide office order dated 15.12.2008 and was then promoted and posted at Ahmedabad. The petitioner was informed about the likelihood of her transfer, as a result of this, she requested for posting at New Delhi or to retain at Mumbai instead of Ahmedabad since the husband of the petitioner was working in Indian Railways and it was possible for her husband to get transfer to Delhi so that the petitioner can stay stay with her family members. However, inspite of her efforts and requests, the petitioner was transferred to Ahmedabad. The petitioner accepted her transfer at Ahmedabad but on account of health issues as she being an asthma patient could not sustain the change in climate since she had to frequently travel from Ahmedabad to Mumbai as her family members are residing at Mumbai. On account of ill-health and travel from Ahmedabad to Mumbai frequently since her health was not permitting such situation, the petitioner tendered her resignation on 9.2.2010 on medical grounds. The petitioner then realised and under a medical guidance started feeling better and was becoming physically and mentally strong and by sending email on 12.7.2010, the petitioner has withdrawn her resignation and the email was sent to then C.R.M. (Ahmedabad) Shri P.C.Hota and Shri C.Singh, Chief Manager Personnel in the office of competent authority. It is the case of the petitioner that she had telephonically talked to Shri P.C.Hota, the then C.R.M. and Shri C. Singh, Chief Manager Personnel Head Office and it was orally confirmed that resignation was received and considered by the authority. The petitioner then remained under an impression that since the matter of withdrawal of resignation had been taken up at the head office, she was waiting for the response of authority but then having not responded in time, the petitioner made an attempt to resume her duties. On 9.8.2010, the petitioner approached the office at Ahmedabad. The petitioner was informed that resignation of the petitioner was accepted by respondent No.1 vide letter dated 27.7.2010. However, copy of the letter was not given. The petitioner then wrote letters and sent emails and reminders on 12.3.2011, 22.3.2011 and 30.3.2011 respectively intimating that she may be permitted to resume her duties as her resignation was withdrawn. However, the authority did not permit, as a result of this, left with no other alternative, the petitioner approached this Court by way of the present petition.

3. The petition came to be entertained and was admitted on 15.3.2012 after hearing learned advocates and then has come up for final hearing in which, learned advocate, Mrs. Sangeeta Pahwa appeared for Mr.Navin K.Pahwa, learned advocate for the petitioner whereas the respondent authorities were represented by learned advocate, Mr. Dakshesh Mehta.

4. Mrs. Sangeeta Pahwa, learned advocate appearing for the petitioner has contended that the petitioner had originally tendered her resignation on account of ill-health as the climatic situation was not conducive and was unable to

frequently travel from Ahmedabad to Mumbai. However, on account of feeling better, before acceptance, the same was withdrawn and, therefore, her resignation could not have been effected by the authority. It has been submitted that it is a settled position of law that employee can withdraw resignation at any time before its acceptance and basically a resignation is a matter of proposal for bringing the contract of service to an end and, therefore, it is governed by sections 4 and 5 of the Indian Contract Act and this proposition is well recognized by a decision delivered by the Allahabad High Court reported in AIR 1981 Allahabad 213 and by referring to relevant extract contained in para 9, a contention is raised that action of not permitting the petitioner is de hors the settled position of law. It has been submitted that resignation was accepted subject to a condition of recovery of all outstanding dues like housing loan, car loan etc. and thus, the acceptance of resignation was conditional one and so long as the housing loan as well as car loan continued to be hypothecated, even resignation could not have been made effective in view of the proposition of law laid down by Hon'ble Apex Court in a case which is reported in (1997)4 SCC page 280 and, therefore also, acceptance of resignation even though was conditional could not have been effected. It has been contended that in the respondent organization, there are no specific rules governing such issue of resignation and as such, according to the petitioner, Central Civil Services Rules are applicable and such rules namely, Central Civil Services (Classification, Control and Appeal) Rules, 1965 particularly Rule 12 provide that if the authority wants to refuse the withdrawal, the rejection should be duly recorded by the appointing authority and suitably informed to the Government servant and, therefore, such process has not been complied with, which also is an additional factor to treat the resignation having not been accepted.

The learned advocate has further contended that in a similar situation, the Coordinate Bench of this Court in Special Civil Application No.4230 of 2011 has also dealt with similar issue and acceptance was held to be bad if it is after withdrawal and then directed the concerned employee to be reinstated in the service and here, according to the petitioner, this is exactly a similar situation and as such, the action on the part of authority is not in consonance with the law.

5. Learned advocate, Mrs. Pahwa has then relied upon the decision delivered by the Division Bench of this Court in Letters Patent Appeal No.742 of 2006 as well as another decision of Hon'ble Apex Court in the case of Nar Singh Pal Vs. Union of India and Others reported in (2000)3 SCC page 588 and has contended that this right of withdrawal is a fundamental right of the petitioner and even cannot be waived nor can there be any estoppel against exercise of such fundamental right and, therefore, in any case, since through email withdrawal has taken place by the petitioner of her resignation, there was no question of not allowing the petitioner to resume the duty. Accordingly, a case is made out which calls for interference of this Court and the relief prayed for be granted in the interest of justice.

No other submissions have been made.

6. To meet with the stand taken by the learned advocate for the petitioner, Mr.Dakshesh Mehta, learned advocate appearing on behalf of the authority has vehemently contended that here is the case in which the petitioner has initiated this litigation as a speculative measure. On the contrary, the petitioner has accepted this stand of the authority of withdrawal of resignation and has accepted voluntarily all the dues which are payable by the respondent and such amount has been withdrawn and accepted specifically as a full and final settlement. It has further been contended that there are serious disputed questions of fact about informing the petitioner by Mr.Hota and the personal meeting of her at hotel and such disputed questions of facts are not possible to be examined at this stage of the proceedings. Mr. Mehta has submitted that this petition has been brought after almost a period of more than eight months and had there been any intention of withdrawal of resignation unconditionally, the amount could not have been withdrawn by her nor at that time, even any indication was given that she had accepted the amount under any duress or pressure. On the contrary, a smart move was executed by the petitioner to send email not from an official email ID of the petitioner and then tried to use that email as a tool to challenge the action of withdrawal. This smart way of the petitioner cannot be encouraged in the interest of justice.

7. For substantiating his contention, the learned advocate Mr. Mehta has specifically insisted on the averments made in the affidavit-in-reply which has been submitted and then has drawn the attention of the letter of the petitioner herself which was written and signed by her undisputedly which is dated 9.8.2010 reflecting on page 45. This letter has clearly indicated that such withdrawal request is nothing but a clear smart play by the petitioner. Not only this letter has been written by her specifically, but on 14.9.2010, the amount of Rs.4,99,706=08 came to be withdrawn by her and next letter on page 47 is indicating that a net total sum of Rs.10,51,655/- was accepted by her through cheque dated 1.11.2010 as a full and final settlement of provident fund account which also indicates that total sum has been withdrawn by the petitioner in bracketed period from August to November and during this passage of time, the petitioner has not agitated anything, however, thereafter, possibly under the advice, the petitioner has sworn on this petition on 11.5.2011 and, therefore, this action is nothing but a clear attempt to misdirect the Court. Mr. Mehta has submitted that withdrawal of resignation was not through her official and authorized email address but through her personal email dated 12.7.2010 which might have been a clear intent of withdrawal, then this amount must not have been withdrawn of a full and final settlement nor a specific letter could have been written on 9.8.2010 and, therefore, this petition is nothing but a speculative litigation which may not be encouraged in exercise of extra-ordinary jurisdiction. On the contrary, according to Mr. Mehta, for the purpose of getting the amount pursuant to her cessation of employment, the petitioner made an attempt to request Mr.Hota and on account of the petitioner being a lady, due sympathy was

shown to her upon her specific request. The sizable amount has been parted with as a full and final settlement and the letter which has been written on 9.8.2010 was written under her signature and in her own handwriting. Therefore, in any case, this withdrawal is a sham and bogus only with a view to see that by raising such grievance, something more can be extracted from the authority. This move in respectful submission of Mr. Mehta may not be encouraged as contended. He has then relied upon a decision delivered by the Hon'ble Apex Court which is reported in (2003)5 SCC page 455 and has contended that even if a decision is communicated afterwards, before that, if resignation is accepted, the latter move of withdrawal is of no consequence and by relying upon the said decision, a request is made not to grant any relief to the petitioner.

8. Having heard the learned advocates appearing for the parties and having gone through the materials produced on record, it has been found clearly that an email of withdrawal of resignation was sent on 12.7.2010 and the petition came to be affirmed on 11.5.2011. It is further reflecting from the record that a specific letter, which has been written by the petitioner on 9.8.2010 and which is not in dispute, appears to have not been shown to the Court at the time when petition was submitted before the Court. Further, when the petition was filed in the month of May, 2011, the petitioner has not even reflected acceptance of sizable amount of Rs.4,99,706=08 by way of payment of gratuity and an amount to the extent of Rs.10,51,655/- of provident fund account as a full and final settlement. This has not been shown by the petitioner and on the basis of mere email, an impression is sought to be created that here is an authority who has arbitrarily dealt with the petitioner. This practice of not disclosing true and correct facts before the Court is deprecated by this Court. Yet another circumstance, which is reflecting, is that the email which has been sent on 12.7.2010 was not from her official ID and as the respondent organization is dealing with thousands of employees, keeping note of official ID of a concerned employee, now even if the said email is sent through a different ID which is not known to the employer, the authority cannot be held responsible for ignoring the same. The administrative system is working on an official ID and, therefore, the organization cannot be expected to search out the regular registered ID of an employee and a different ID which is not available on the site. Had there been a genuine intention to insist upon email dated 12.7.2010 then, on the very next month on 9.8.2010, nothing has been uttered about her intention of withdrawal nor which has been reflected or agitated even while accepting the amounts of gratuity and provident fund as a full and final settlement and, therefore, it appears that this petition is nothing but a speculative move by the petitioner trying to take advantage of the proposition of law which reflects on a different set of circumstances and not like the present one. The rejoinder which has been submitted trying to clarify the position about her email dated 12.7.2010 as well as her writing by letter dated 9.8.2010 is nothing but a mere concoction on the part of the petitioner and in any case, the defense of the petitioner in rejoinder on this issue emanates disputed questions of facts which in the present

background the Court would not like to dwelve into. Yet another letter, which has been tried to be insisted upon, is a communication dated 23.10.2010 reflecting at Annexure to the rejoinder but, this rejoinder and the letter are not leading to any way which can be relied upon especially when at the time of acceptance of huge amount as a full and final settlement, not a whisper is raised by the petitioner. This assertion on the part of the petitioner and the defense of the respondent is not possible to be gone into and adjudicated by the Court on mere affidavits on oath and, therefore, in the considered opinion of this Court, those questions of facts on this issue of resignation cannot be gone into by the Court by mere assertion on oath particularly when the petitioner has concealed two material circumstances which are unearthed by the deponent of authority in the affidavit-in-reply.

9. The Court has further taken note of the circumstance that there was some meeting with Mr. Hota on 9.8.2010 but actually the petitioner was not allowed to join the duty thereafter nor allowed to meet the then CRM and something has been conveyed by Mr. Hota on this issue which aspects are not possible to be accepted by the Court since Mr. Hota is neither a party to the present proceeding nor any assertion or confirmation about this averment is coming on record and, therefore, the Court is not inclined to examine this issue as has been averred by the petitioner. The over-all impression which is generating from the record is that the petitioner has accepted the fact of her withdrawal in true letter and spirit and had given in writing specifically without agitating anything on 9.8.2010 and as a full and final settlement has secured the amounts, as indicated in the affidavit-in-reply and, therefore, these circumstances are not generating any confidence in favour of the petitioner and the Court would not like to exercise extra-ordinary jurisdiction in such a disputed background of facts. The Court is of the opinion that no case is made out by the petitioner so as to consider the relief which has been prayed for. However, the Court is of the opinion that even if some grievance is there about oral conveying to the petitioner about not permitting the petitioner to meet Mr. Hota then, some talks with the then CRM on all these issues can be gone into in an appropriate proceedings before a forum where such facts can be examined by way of leading evidence. In this background, the Court is of the considered opinion that no case is made out to exercise extra-ordinary jurisdiction.

10. So far as the judgments which have been relied upon by both the sides are concerned, it appears that background of facts is altogether different. First of all, an attempt has been made to rely upon a decision which is delivered in Letters Patent Appeal No.742 of 2006 on 20.2.2014. There, the facts appear to be different. No doubt, the principle is not disputed by the Court in any manner which has been laid down but in the peculiar set of present case, it is not possible for the Court to apply the same as a straight jacket formula. In that case, the employer had refused to permit an employee to withdraw his resignation and during pendency of the petition which was filed, an employee had withdrawn certain amounts from the employer and that was treated as

withdrawal without prejudice to his rights and contentions in the petition and in that background, the principle of acquiescence was held not to be applied. Whereas here is the case in which a specific writing undisputedly was given by the petitioner herself in her own handwriting signed by her on 9.8.2010 and thereafter has filled in the form on 14.9.2010 and has withdrawn the amount of gratuity to the extent of Rs.4,99,706=08 and has also accepted an amount of Rs.10,51,655/- towards the provident fund amount as full and final settlement and at that time also, not a single protest was made and after that, for a pretty long period, the petitioner remained silent and submitted objection after confirmation in the month of May, 2011 and, therefore, here is the case in which during pendency of the petition, no such withdrawal has taken place. On the contrary, everything is accepted as a full and final settlement and then petition was brought as a speculative move and further, in that case, the Division Bench has clearly observed in para 21 that when nothing was brought to the notice and such acceptance of withdrawal of amount during pendency of the petition was by way of full and final settlement, whereas, in the case on hand, clearly the amount has been withdrawn as a full and final settlement and a bare reading of her own letter dated 9.8.2010 permitting the authority to deduct all pending dues from the amount, medical premium, etc. clearly indicates that the petitioner in true letter and spirit, has tendered her resignation which appears to have been rightly accepted by the authority. Further, the email which has been sent was not through official ID of the petitioner and the official ID which was registered in the employer's record was different, which fact is not in dispute and as such, since the competent authority had already accepted the resignation with immediate effect, which was communicated later on, this would not permit the petitioner to take a summer-sault and claim any right about her withdrawal. In fact, the petitioner's resignation letter dated 9.2.2010 has already been accepted by the competent authority with immediate effect and such decision was later on communicated vide letter dated 27.7.2010 and in turn, the post was sent on 9.8.2010 and, therefore, the decision which has been relied upon by the learned advocate for the authority clearly takes care of the controversy which has been generated in the present proceeding.

11. Again if a resignation dated 9.2.2010 is to be looked into, it was specifically requested by the petitioner herself to accept the resignation with immediate effect and there was no remote indication of any condition nor any condition is reflecting of any nature in a latter communication written by herself on 9.8.2010. As a result of this, the decisions which have been relied upon are in a distinct set of circumstances than what is prevailing in the present case on hand. No doubt, the fundamental right cannot be waived but here is the case in which the withdrawal has taken place after acceptance. Here is the case in which for a pretty long period, the petitioner has waited for bringing the petition before this Court on the basis of unofficial ID communication dated 12.7.2010 and by assertion on oath about meeting with Mr. Hota and the then CRM which are seriously disputed and as such the Court is unable to apply such principles in a

different set of circumstances as has been indicated. Hence, no case is made out by the petitioner in the considered opinion of this Court.

12. In this background, as indicated, the proposition which has been laid down by the Court in case of North Zone Cultural Centre and Another Vs. Vedpathi Dinesh Kumar reported in (2003)5 Supreme Court Cases 455 appears to be governing the background of present fact. Hence, the catch note of the same is reproduced hereinafter:

"Service Law-Resignation--Effective date of- Proof of acceptance-Held, becomes effective on acceptance even if the acceptance is not communicated-In the present case, relevant rules not postulating communication of acceptance as a condition precedent for coming into effect of resignation-Employee tendering resignation with immediate effect and employer accepting the same on the same day but communicating the acceptance to the employee after 13 days-During the intervening period, the employee withdrawing his resignation - Such delay of mere 13 days, held, not an undue delay so as to infer that resignation had not already been accepted-Even the continued attendance to duty and signing of attendance register by the said employee during the intervening period, held, of no assistance to claim that the resignation had not taken effect -More so, when there was no responsible officer in the office during that time and taking the advantage of that situation the employee had marked his attendance-Hence, High Court's decision holding that communication of the acceptance of resignation subsequent to withdrawal of the resignation by the employee had become redundant, held, improper."

13. In the said case, the apex Court has also taken note that when a concerned employee has attended duty and signed the attendance register as well, that was not the relevant circumstance to be treated as lawful and has held that mere late communication would be of no consequence. Here, the background of fact is clearly indicating that this proposition would apply with full force. Considering this set of circumstances, in the considered opinion of this Court, this is not a fit case to exercise extra-ordinary jurisdiction in favour of the present petitioner. As a result of this, the petition being devoid of merit is hereby dismissed. Rule is discharged with no order as to costs.