

(2009) 04 GUJ CK 0008
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1113 of 2001 (With Letters Patent Appeal No. 1133 of 2007)

Oil and Natural Gas Commission and Others

APPELLANT

Vs

L.K. Khan Babi

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 226
Letters Patent Act, 1865 — Clause 15

Citation : (2009) 04 GUJ CK 0008

Hon'ble Judges : R.M. Doshit, J;M.D. Shah, J

Bench : Division Bench

Advocate : K.J. Brahmbhatt, for the Appellant; I.S. Supehia, for the Respondent

Final Decision : Dismissed

Judgement

Ms. R.M. Doshit, J.—These two Appeals preferred under Clause 15 of the Letters Patent arise from the common judgment and order dated 24th July, 2001 passed by the learned Single Judge insofar as the Special Civil Application No. 323 of 1993 is partially allowed.

2. The Letters Patent Appeal No. 1113 of 2001 has been preferred by the Oil and Natural Gas Corporation Ltd. (hereinafter referred to as, "the Corporation") against the direction issued by the learned Single Judge "to reinstate the petitioner of Special Civil Application No. 323 of 1993 in service notionally and the petitioner will be deemed to be in service for the purpose of retiral benefits. The petitioner is entitled to pay 25% back wages from the date 1.9.1992 till he resumes his duty in the respondent ONGC with the benefit of revision of pay scale admissible under Rules and Regulations of the respondent ONGC as well as retiral benefits with regard to gratuity as per the Gratuity Act or gratuity scheme applicable to the employees of the respondent ONGC".

3. The Letters Patent Appeal No. 1133 of 2001 has been preferred by the writ petitioner, the employee of the Corporation, insofar as the learned Single judge

has awarded back wages to the extent of 25% and not the full back wages.

4. On 12th January, 1989, the Corporation issued Office Memorandum containing scheme for voluntary retirement for the Executive/employees of the Corporation. Under the said scheme, the employees of the Corporation who had completed ten years of service or forty years of age were permitted to seek voluntary retirement by written request. In furtherance thereof, a circular was issued on 20th March, 1991 containing the procedure for processing the application, for voluntary retirement scheme under the Office Memorandum dated 12th January, 1989. The said procedure provided, inter alia that, "On receipt of the application for voluntary retirement, an exit interview will be invariably conducted immediately and the report of the exit interview will be enclosed along with Proforma L-1 and the original application and submitted to the Head of the Project for recommendation". Neither the aforesaid Office Memorandum nor the circular provided for withdrawal of the application for voluntary retirement. Such provisions came to be made in Office Memorandum dated 26th November, 1991. The said Office Memorandum provided inter alia that, "The application of those officers/employees for withdrawing the voluntary retirement whose cases are in the pipeline and have not been decided by the Competent Authority may be considered on merits.

5. The facts undisputed are that on 1st May, 1992, the writ petitioner applied for voluntary retirement effective from 31st July, 1992 under the above referred Office Memorandum dated 12th January, 1989. Before his application was processed; before the effective date of voluntary retirement; on 15th July, 1992 he withdrew his application for voluntary retirement Nevertheless, by order dated 2nd September, 1992, his application for voluntary retirement was accepted. He was retired from service from 2nd September, 1992. On his retirement, he was paid the terminal benefits according to his entitlement.

Feeling aggrieved, the writ petitioner preferred the above Special Civil Application No. 323 of 1993. He challenged the validity of the aforesaid order dated 2nd September, 1992 and prayed for consequential benefits.

6. The petition was contested by the Corporation. According to the Corporation, the challenge to the order dated 2nd September, 1992 was not tenable. The writ petitioner had accepted the order of voluntary retirement and had also accepted the terminal benefits. Hence, he was estopped from challenging the order of voluntary retirement. It was also brought on record that prior to his application for voluntary retirement, in the year 1991, the writ petitioner had remained absent from service for a long time. Part of his absence from service was regularized. However, for the remaining period of absence from service, he was visited with punishment of withholding of increments. By order dated 30th September, 1991, he was visited with punishment of withholding of two increments and recovery of Rs. 11514.37 ps; 50% of the loss of Rs. 23028.75ps. suffered by the Corporation. In spite of the aforesaid punishments imposed upon him, the writ petitioner continued to remain absent from service. Time and

again, he was issued notices to join the duty. On 1st May, 1992 he was sent a telegram to join duty. In answer, he submitted application for voluntary retirement. On account of his continuous absence from service, he was not available for exit interview. The Corporation, therefore, could not conduct the exit interview. The application for withdrawal made by the writ petitioner was considered by the concerned authority. Considering the conduct of the writ petitioner and his continuous absence from service, his application for voluntary retirement was accepted. Copy of office notings made in that behalf have also been produced on the record.

7. Learned Advocate Ms. Brahmhatt has appeared for the Corporation. She has submitted that the learned Single Judge has failed to construe the aforesaid voluntary retirement scheme correctly. She has submitted that the said scheme provides for exit interview. In absence of such exit interview, the action of the Corporation would not be vitiated. The learned Single Judge has failed to appreciate that the writ petitioner was not available for exit interview. She has further submitted that the aforesaid clause which applied to the writ petitioner specifically mentions consideration of the application for withdrawal from voluntary retirement. After such consideration, the Corporation may or may not accept it. In the present case, the application for withdrawal made by the writ petitioner on 15th July, 1992 was considered by the Corporation as disclosed in the counter-affidavit and the accompanying documents. The Corporation did not accept the withdrawal application made by the writ petitioner for valid and cogent reasons. Such an action ought not to have been set aside by the learned Single Judge.

8. Mr. Supehia has appeared for the writ petitioner. He has contested the appeal preferred by the Corporation. He has also assailed the judgment of the learned Single Judge insofar as the writ petitioner has not been awarded the arrears of salary in its entirety. He has relied upon the judgment of the Supreme Court in the matter of General Manager, Appellate Authority, Bank of India and Another Vs. Mohd. Nizamuddin, He has submitted that a similar provision in respect of exit interview prevalent in the appellant-bank, the Honourable Supreme Court has held that the voluntary retirement is not automatic and that the exit interview is not a mere formality. We are afraid, Mr. Supehia has failed to read the judgment in true context. In the matter before the Honourable Supreme Court, like the writ petitioner, the employee of the appellant-bank had remained absent from duty without leave. When he was called upon to report for duty, he applied for voluntary retirement. He, however, did not appear for the exit interview. The application for voluntary retirement was not accepted. Instead after holding due departmental inquiry, the employee was dismissed from service. In the ensuing litigation the employee claimed that on expiry of period of notice, in absence of any decision by the bank, the employee stood retired from service automatically. The claim was negated by the Honourable Supreme Court with the above referred observations. In other words, in absence of specific order permitting the employee to voluntarily retire, the employee was held to

have continued in service.

9. In the present case, the facts are the reverse. As the writ petitioner was not available for exit interview, without conducting the exit interview, his application for voluntary retirement was accepted by an express order. In our view, the scheme for voluntary retirement contained in the above referred Office Memoranda and the circular is not statutory in nature but provides the guiding principles. Though the scheme provides for conducting exit interview invariably, in our opinion, it cannot be mandatory or compulsory to hold the exit interview. We do not propose to say that the exit interview may or may not be held at the whim or caprice of the officer concerned. The procedure set-out in the scheme is required to be followed. However if, in the given circumstances, it is not possible to hold exit interview any order made without holding the exit interview would not be vitiated on that ground alone. As recorded herein above, the writ petitioner had remained absent from service for a long time. He did not respond to the notices issued by the Corporation. He was not available for exit interview. The writ petitioner cannot be allowed to take advantage of his own wrong.

10. In view of the above discussion, we are of the opinion that, the impugned order permitting voluntary retirement of the writ petitioner was made by the Corporation in consonance with the scheme for voluntary retirement. This Court in exercise of power conferred by Article 226 of the Constitution of India cannot sit in appeal over the decision of the Corporation to decide whether or not there was sufficient reason for not accepting withdrawal application made by the writ petitioner. Suffice, that the application for withdrawal made by the writ petitioner was considered keeping in view the relevant facts.

11. For the aforesaid reasons, the Letters Patent Appeal No. 1113 of 2001 preferred by the Corporation is allowed. Letters Patent Appeal No. 1133 of 2001 preferred by the writ petitioner is dismissed. The impugned judgment and order passed by the learned Single Judge in above Special Civil Application No. 323 of 1993 is quashed and set aside. Special Civil Application No. 323 of 1993 is dismissed. Parties will bear their own costs.