

(2009) 11 GUJ CK 0070
In the Gujarat High Court

Case No : Special Civil Application No. 1595 of 2009

Rajeshkumar Ramubhai Bhatia

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 10-11-2009

Acts Referred:

Gujarat Civil Services (Leave) (Second Amendment) Rules, 2006 — Rule 16
Gujarat Civil Services (Leave) Rules, 2002 — Rule 16(2)

Citation : (2009) 11 GUJ CK 0070

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : N.V. Solanki, for the Appellant; Moxa Thakkar, AGP for Respondent 1, for the Respondent

Judgement

Jayant Patel, J.—Rule. Ms. Moxa Thakkar, learned Assistant Government Pleader waives service of notice of Rule.

2. With the consent of the learned advocate appearing for the parties, the matter is finally heard today.

3. The short facts of the case appears to be that the petitioner was appointed as Range Forest Officer (RFO) in the year 1978 and thereafter he continued in service and he was also promoted on the post of Assistant Conservator of Forest (ACF) and continued to discharge the duty upto July, 2001. Thereafter, in August, 2001 he had proceeded on leave because of the ailment of his brother. He applied for leave from 06.08.2001 to 14.08.2001 and had prayed further extension of leave from time to time. It is the case of the petitioner that there was already a credit balance of the leave, whereas, as per the respondent, the leave was not sanctioned after 01.12.2001 and the petitioner inspite of the repeated reminders by the respondent, did not join the duty and therefore, he was treated as in unauthorized absence. Proceedings came to be initiated and ultimately vide order dated 22.07.2008, in exercise of the power under Rule 16(2) of the Gujarat Civil Services (Leave) Rules, 2002 as the petitioner

remained absent without leave, he was deemed to have resigned and his services are put to an end. It is under these circumstances, the petitioner has approached to this Court by the present petition.

4. Heard Mr. Solanki, learned Counsel for the petitioner and Ms. Thakkar, learned AGP for the State - Authorities.

5. The contention raised on behalf of the petitioner by the learned Counsel was that because of the personal circumstances, the petitioner could not resume the duty and he contended that the impugned order has been passed in breach of the principles of natural justice in as much as no inquiry is held, therefore, the impugned order is illegal and deserves to be quashed and set aside.

6. Examination on the said contention shows that the department has made number of attempts by issuing notice to the petitioner calling upon him to join the duty and not only that, but the advertisement was also issued on 23.07.04, 24.07.04 and 25.07.04 in Sandesh, Gujarat Samachar and Times of India, by way of public notice but the petitioner has not joined the duty. As per the petitioner, he was out of the country, therefore, no notice is served. Even if such contention is accepted then also, the fact remains that the department has not sanctioned the leave and the petitioner has not joined the duty and his absence is without sanctioned leave, therefore, such can be said an unauthorized absence. Rule 16 of the Gujarat Civil Services (Leave) (Second Amendment) Rules, 2006 reads as under:

16. Maximum Period of Continuous Leave,

(1) No Government employee shall be granted leave of any kind for a continuous period exceeding five years.

(2) A Government employee shall be deemed to have resigned from the service if, he,-

(a) is absent without authorization for a period of one year from the date of expiry of sanctioned leave or permission; or

(b) is absent from the duty for a continuous period exceeding five years even if the period of the unauthorized absence is for less than a year;

Provided that a reasonable opportunity to explain the reason for such absence shall be given to the Government employee before the provisions of Sub-rule (2) are invoked.

7. The aforesaid Rule provides that if the Government employee is absent without authorization for a period of one year from the date of expiry of the sanctioned leave or permission or his absence from the duty for a continuous period exceeding five years even if the period of the unauthorized absence is for a period of less than a year then the Government employee shall be deemed to have resigned from service. The requirement is that reasonable opportunity to explain the reason for such absence to be given before invoking the aforesaid

power under Rule 16(2). In the present case, sufficient opportunity was given but the petitioner has not availed of the same. It is the case of the petitioner that he has declared that he is tendering the resignation but the fact remains that he has in fact neither resumed the duty nor his leave was sanctioned. If any Government servant by one sided decision without there being any sanctioned leave, has remained absent unauthorizedly, and such period is one year or more the provisions of Rule 16(2) would be attracted and even if it is less than one year then the condition as required under Sub-Rule 2(b) would be required to be satisfied. Examining the matter on both aspects, it is apparent that the petitioner has remained absent without sanctioned leave and not only that but he has left the country and has not made any attempt to resume the duty. The fact that he responded the notice by making declaration of resigning from the post shows that he was aware about non-sanctioning of the leave and the intimation to him for joining duty but inspite of the same, he has not joined the duty. As observed earlier, if the Government employee had left the country, only option available to the department was to issue a public notice but thereafter also, if the petitioner has not joined the duty, it would be a case which would fall under Rule 16(2) of the aforesaid Rules. Therefore, if the power is exercised for passing the impugned order for deemed resignation of the petitioner, such cannot be said to be in breach of the principles of natural justice nor can be termed as arbitrary or unreasonable. Under the circumstances, the impugned order dated 22.07.2008 passed by the State Government does not deserve to be interfered with.

8. However, the learned Counsel for the petitioner had alternatively submitted that even if the petitioner is treated as resigned from service then also, the fact remains that he has worked upto 01.12.2001 with the Government and prior thereto, there was no departmental proceedings or any inquiry pending therefore, if his resignation is deemed to be with effect from 01.12.2001, he would be entitled to the benefits as may be available in accordance with law for his valid completion of service upto 01.12.2001.

9. It may be observed that this Court on 27.10.2009 had passed the following order.

1. Upon hearing Mr. Solanki for the petitioner and Ms.Thakkar, learned AGP upon the advance copy, it prima facie appears that the power is exercised by the respondent authority under the Gujarat Civil Services (Leave) Rules, 2002 and as a result thereof, the petitioner is deemed to have resigned from service with effect from 01.12.2001.

2. Prima facie, upon hearing the learned advocate for the petitioner, this Court is not convinced on the aspects of challenge to exercise of the power by the authority. However, even if the petitioner is considered as not in service or deemed to have resigned from 01.12.2001, it is an undisputed position that he has worked upto 01.12.2001 and therefore, even if he is treated as resigned, the aspects as to whether he would be entitled to terminal benefits would be required to be considered, more particularly because the petitioner has not been

removed from the service, but has been treated as deemed to have resigned under the relevant rules.

3. Ms. Thakkar, learned AGP seeks time to inquire on the said aspects.

4. Hence, S.O. To 10.11.2009.

10. Today, the learned AGP is not in a position to show any valid reason as to why the terminal benefits, as may be available to the petitioner as if resigned from 01.12.2001, should not be made available to the petitioner. She only submitted that as per her instruction, such can be granted if it is so ordered by this Court. In my view the same is hardly any valid explanation on the part of the Government to deny any legitimate benefit to any Government servant who has resigned after completion of 21 years of service.

11. It deserves to be recorded that the terminal benefits may not be available had the petitioner removed or dismissed from service by the Government. Such is not the fact situation in the present case. The order itself speaks for the exercise of power by the Government under the Rules of 2002 for deemed resignation, therefore, the effect of the order would be that the petitioner is deemed to have resigned and the services are put to an end. When the power is exercised under Rule 16(2), it is no case of removal or dismissal from service but could be said as a statutory deeming fiction for the resignation and putting an end to the services. It is true that the order has been passed on 22.07.2008 but the perusal of the order shows that the petitioner has remained on duty and has worked upto 01.12.2001, thereafter, has not actually worked on the post therefore, the reasonable interpretation of the order of the State Government under Rule 16(2) of the Rules would be that the petitioner is deemed to have resigned from 01.12.2001.

12. The learned Counsel for the petitioner did contend that the retrospective effect may not be given to the order and as the order is passed on 22.07.2008, he should be termed as deemed to have resigned only from 22.07.2008.

13. In my view, it is not a case where the petitioner had actually worked for another period or pending the consideration of the matter by the State Government. When it is an admitted position that the petitioner has not actually worked after 01.12.2001. As there was no sanctioned leave for the subsequent period, the deemed resignation is to be treated as, from the last date on which the employee concern had actually worked. Therefore, it is not a case of giving retrospective effect to the order of the State Government but, is a case for giving correct and real effect of the order of deemed resignation and the date on which such deemed fiction would apply if the employee concern is to be considered for the legitimate terminal benefits upto the date on which he worked on duty. Therefore, the said contention of the learned Counsel for the petitioner does not deserve to be accepted.

14. In view of the aforesaid observation, the conclusion would remain that the

petitioner actually worked upto 01.12.2001 and by deeming fiction he is treated as resigned after 01.12.2001 and his services have come to an end accordingly. Further, as observed earlier, there is no valid reason shown by the learned AGP to deny the terminal benefits to the petitioner, as if he resigned from 01.12.2001.

15. Under these circumstances, it will be required by the respondents to consider the case of the petitioner for all terminal benefits, as may be available, as per the prevailing policy of the Government, as if the petitioner resigned from 01.12.2001 and to pay the same to the petitioner. The aforesaid exercise shall be completed within a period of four months from the date of receipt of order of this Court and the requisite amount shall be disbursed. The petitioner also will be required to undertake the necessary formalities for submitting the relevant papers for such purpose and after submission of the papers, within three months, the matter shall be finalized.

16. The petition is partly allowed to the aforesaid extent. Rule is made absolute. No order as to costs. Direct service is permitted.