
(2013) 02 GUJ CK 0045

In the Gujarat High Court

Case No : Special Civil Application No. 5656 of 2002

Ramanbhai Ranchodbhai Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Citation : (2013) LabIC 2267

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : Pradeep Patel, for the Appellant; Rasesh Rindani, AGP, for the Respondent

Final Decision : Allowed

Judgement

Paresh Upadhyay, J.—By way of this petition, challenge is made to the order dated 10.4.1995, passed by the Commissioner of Health, Gujarat State, by which, the application of the petitioner for voluntary retirement is treated to be resignation and the same is accepted as resignation. The said order is subsequently corrected on 23.9.2003 whereby, the effective date of resignation is indicated to be 8.7.1991. The petitioner has also prayed that the respondent authorities be directed to give pension and other retirement benefits, considering the fact that the petitioner had put in more than 28 years of service, before submitting application for voluntary retirement. Heard Mr. Paradeep Patel learned advocate for the petitioner and Mr. Rasesh Rindani learned A.G.P. for the respondent authorities.

2. Learned counsel for the petitioner stated that the petitioner had joined the services of the Government as Leprosy Supervisor on 28.5.1963. In the year 1991, the petitioner had completed more than 28 years of service and owing to his personal difficulties, he was not in a position to continue in Government service, and therefore, on dated 30.11.1991, he gave an application to the authorities for voluntary retirement. In the said application, the petitioner explained in detail, that on completion of 28 years of service, he is entitled to

pension and even additional five years service and increments for the purpose of calculation of pension. It was requested that the same be accepted. Along with the said application, he had also forwarded pension papers duly filled in. In subsequent follow-up letter dated 2.12.1991, the petitioner inadvertently used the word "voluntary resignation" instead of "voluntary retirement". The authorities passed an order on 10.4.1995 declaring that the request of the petitioner for resignation is accepted. The effect of passing the said order, holding that the resignation is accepted, was that the petitioner would not be entitled to any retirement dues, neither pension, nor gratuity, nor leave encashment, nothing. It is pointed out that, the petitioner had, even prior to passing of this order, explained to the authorities that since he had completed 28 years services, he was entitled to pension and had also forwarded pension papers duly filled in, and therefore, in letter as well as in spirit, he had applied for voluntary retirement and not resignation. It is contended that usage of improper vocabulary in one of the subsequent letter, i.e. instead of "voluntary retirement" the word "voluntary resignation", should not wipe out his entire service, to disentitle him to receive retirement dues. Learned counsel for the petitioner Mr. Pradeep Patel has further submitted that the son of the petitioner was ill. He was to be treated and even medicines which were not available here, were to be brought and purchased from abroad. The petitioner also became mentally disturbed and ultimately, his son did not survive. It is indicated that the date of birth of the petitioner is 21.8.1938, and thus, he would Have attained the age of superannuation in August, 1996, retiring with effect from 31.8.1996. Couple of years before superannuation, due to his personal difficulties, the petitioner tendered an application for voluntary retirement which would entitle him to receive pensionary benefits. The authorities, just with a view to disown liability of retirement dues, caught one word conveniently from one of the applications and treated that it is not voluntary retirement but it is resignation. Under these circumstances, by the order dated 10.4.1995, the authorities declared that resignation of the petitioner is accepted. It is indicated that in the said order it was not indicated as to which is the date from which the resignation was accepted. It is indicated that the petitioner continued exchanging correspondence with the authorities and ultimately, approached this Court by way of filing the present petition and thereafter the authorities passed one more order on 23.9.2003, in furtherance of order dated 10.4.1995, and specified that the resignation of the petitioner is accepted with effect from 8.7.1991. It is this decision of treating the application of the petitioner for voluntary retirement as resignation which is under challenge in this petition. Learned counsel for the petitioner has, in support of this petition, also relied on the decision of this Court rendered in Special Civil Application No. 9519 of 2009 dated 23.7.2010, wherein, under almost identical circumstances, this Court had taken the view that there is no scheme like voluntary resignation in the Government. When an employee has put in more than 28 years of service and when he gives an application along with pension papers duly filled in, by no stretch of imagination it could have been said that the petitioner is not entitled for retirement benefits. Learned counsel for the

petitioner contended that the petitioner be granted reliefs as prayed for in this petition.

3. On the other hand, learned AGP Mr. Rasesh Rindani, by referring to the affidavit-in-reply filed on behalf of the respondent authorities, through one Shri J. P. Soni, Administrative Officer (Leprosy) Commissionerate of Health, contended that the petitioner on his own had consciously written in his application that he is giving application for voluntary resignation and therefore, no fault can be found with the decision of the authorities, accepting the resignation. It is contended that the request of the petitioner having been accepted as it is, he is not entitled to any retirement benefit and in turn, any relief and the petition be dismissed.

4. Having heard learned advocates appearing for the parties and having gone through the record, including the affidavit-in-reply, this Court finds that, the petitioner had joined the service of the Government as Leprosy Supervisor on 28.5.1963. In the year 1991, the petitioner had completed 28 years of service, which is more than 20 years and thereby was entitled to ask for voluntary retirement and claim pension. On 30.11.1991, he gave an application to the authorities for voluntary retirement. The reading of the said application, makes it clear that the petitioner explained in detail, that on completion of 28 years of service, he is entitled to pension and even additional five years service and increments for the purpose of calculation of pension. The petitioner had also forwarded pension papers duly filled in. However, in the subsequent follow-up letter dated 2.12.1991, the petitioner used the word "voluntary resignation" instead of "voluntary retirement" and the authorities got delighted. The authorities passed an order on 10.4.1995 declaring that the request of the petitioner for "resignation" is accepted. The effect of passing the said order, holding that the resignation is accepted, was that the petitioner would not be entitled to any retirement dues. It is also on record that the petitioner had, even prior to passing of the said order, explained to the authorities that since he had completed 28 years services, he was entitled to pension and he had also forwarded pension papers duly filled in, and therefore, he had applied for voluntary retirement and not resignation. Learned counsel for the petitioner is right in his contention that usage of improper vocabulary, i.e. instead of "voluntary retirement" the word "voluntary resignation" would not wipe out his entire service, to disentitle him to receive retirement dues. It is also required to be noted that the date of birth of the petitioner is 21.8.1938, and thus, he would have retired on attaining the age of superannuation in August, 1996. Couple of years before his superannuation retirement, the petitioner tendered an application for voluntary retirement which would entitle him to receive pensionary benefits, as noted above and he had no reason to resign from service and an officer tendering resignation would not send pension papers also. In spite of this, the respondent authorities, just with a view to disown liability of retirement dues, caught one word conveniently, that too from one of the subsequent applications and treated that it is not voluntary retirement but it is resignation. In my view, this decision, which is impugned in this petition, in this

factual background is illegal and arbitrary and needs to be quashed and set aside. Additionally this Court also finds that, the reliance placed by the petitioner on the decision of this Court in Special Civil Application No. 9519 of 2009 dated 23.7.2010 is also well founded. Considering the totality, this Court finds that the petition needs to be allowed and the petitioner is entitled to the retirement dues as prayed for in this petition.

5. Coming to the next question of giving consequential reliefs to the petitioner, it needs to be noted that there is some discrepancy in the date of acceptance of the resignation. With a view to see that the issue which has remained pending for about two decades is not derailed further, it is noted that resignation is accepted with effect from 8.7.1991, i.e., prior to date of application for voluntary retirement, which was on 30.11.1991 and even prior to application dated 2.12.1991 from which the authorities lifted one convenient word "resignation". On the face of order of the respondent authorities, treating the petitioner having resigned from 8.7.1991, the authorities can be directed to give all consequential benefits to the petitioner with effect from 8.7.1991. However, the application of the petitioner for voluntary retirement was dated 30.11.1991 and the requirement of the notice period is 90 days and December and January both the months having 31 days, the notice period would be over on 28.2.1992 and therefore, 1.3.1992 can be taken as effective date of retirement. However, learned counsel for the petitioner has conceded that to avoid any hypertechnical objection of one or two days being raised by the authorities subsequently, instead of 1.3.1992 let it be treated as 1.4.1992. Further, if 8.7.1991 is treated to be effective date, since that is the date mentioned by the authorities in office order dated 23.9.2003, it would add to the burden on the Government exchequer and therefore, though the respondent authorities have indicated 8-7.1991 as the effective date of resignation, the petitioner is held to be entitled to receive retirement dues from 1.4.1992.

6. In above factual back ground and for the reasons recorded above, this Court arrives at the judgment and passes order as under: (I) The action of the respondents of treating the petitioner having resigned from service, is held to be illegal and arbitrary, and consequently, the office order dated 10.4.1995, which is impugned in this petition, is quashed and set aside. The corrigendum dated 23.9.2003, to the said office order dated 10.4.1995, would not survive.

(II) The petitioner is declared to have retired voluntarily from the service of the Government with effect from 1.4.1992. Considering 28.5.1963 as the date of joining the service, the petitioner is held to be entitled to all retirement dues.

(III) While calculating pensionable service, and pensionable pay, the respondent authorities shall also take into consideration notional increase in the length of service and increments, which is given to other employees also, as per Rules.

(IV) All retirement dues, as per Rules, such as, pension, gratuity, commutation of pension, leave encashment, group insurance, provident fund and any other

amount payable in accordance with Rules, shall be paid to the petitioner. While doing calculation in this regard, the revision of pension of the petitioner, in accordance with Rules of the Government, shall also be taken into consideration.

(V) The above ordered payment shall be made by the authorities to the petitioner, within a period of three months from today.

Petition stands allowed. Rule made absolute. No order as to costs.