

(2004) 04 GUJ CK 0069

In the Gujarat High Court

Case No : Special Civil Application No. 5981 of 2002

Rasubha Nitubha Jhala

APPELLANT

Vs

Divisional Controller, Gujarat State Road Transport
Corporation and Another

RESPONDENT

Date of Decision : 16-04-2004

Acts Referred:

Citation : (2004) 04 GUJ CK 0069

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : P.J. Yagnik, for the Appellant; H.S. Munshaw, for the Respondent

Final Decision : Allowed

Judgement

Ravi R. Tripathi, J.—The petitioner, who has studied only upto 9th Standard, joined the services of the respondent No.1, Gujarat State

Road Transport Corporation (hereinafter referred to as "the Corporation" for short) as a bus conductor on probation on 15th October, 1966 and

on 14th April, 1967, he was made permanent at Surendrangar, where the petitioner continued to work and in the year 2000, he was promoted to

the post of Traffic Controller, but, as the petitioner was not keeping good health, by a letter dated 3rd May, 2001, he requested the authorities to

revert him to the post of conductor.

2. The petitioner, on 11th May, 2001, made an application to the respondent, a copy of which is produced at Annexure-F to the petition, wherein

the petitioner confused the two different concepts of `resignation" and `voluntary retirement" and requested that his `voluntary resignation" be

accepted.

In fact, there is no concept like `voluntary resignation". So far as the retirement is concerned, there are different concepts like retirement, voluntary retirement and compulsory retirement. Retirement is a person on reaching the age of superannuation retires under the Service Regulations, while voluntary retirement is, a person, even before reaching the age of superannuation, opts for the retirement, voluntarily in that event one gets all benefits admissible under the Service Regulations. So far as `compulsory retirement" is concerned, there is a stigma attached to it, but then, instead of being thrown out of service, either by `termination" or `dismissal", a person is compulsorily retired to avoid severe consequences of dismissal or termination.

2.1 The petitioner, who is not well educated, coined his own term and instead of writing `voluntary retirement" wrote `voluntary resignation" in his application dated 11th May, 2001. The application was received on 12th May, 2001 wherein it was specifically mentioned that on account of his personal reasons, he will not be able to continue in service and will like to retire voluntarily with effect from 11th August, 2001. The petitioner selected this date keeping in mind the fact that he has to give three months" notice and an undertaking was also given in the said letter, which was to the effect that, `he will continue to serve till that date only so that he has not to pay the salary in lieu of notice period. From the reading of the application dated 11th May, 2001, it is clear that it was only on account of sheer confusion on the part of the petitioner that he used the term `resignation" in place of `retirement". This is clear from the fact that it was every time prefixed with the term, `voluntary".

2.2 The authorities processed the application of the petitioner and at one stage, asked the petitioner to clarify the position about his resignation.

The petitioner tendered his clarification by a writing dated 20th June, 2001, a copy of which is produced along with the affidavit-in-reply filed on behalf of respondent no.1, at Annexure-D, wherein `voluntary resignation" is again mentioned and, as is informed by the authorities about serving during the last month; before his request is granted, he reiterated that he will continue to serve till 10th August, 2001 and in any case if he is not able to discharge his duties, then, he will pay the notice pay. This is also mentioned in the communication dated 28th May, 2002 addressed to the

learned Advocate for the petitioner, in reply to the representation-notice dated 7th May, 2002. As the petitioner was not granted the benefits of

`voluntary retirement', he had approached this Court by filing Special Civil Application No.4206 of 2002, which was disposed of by this Court

(Coram:H.K.Rathod, J.) by order dated 18th April, 2002, observing that :

Heard learned advocate Mr. P.J.Yagnik on behalf of the petitioner. The grievance of the petitioner is that though he has given three months" notice

to retire from service of the respondent-corporation, his retirement has been considered as voluntary resignation. Therefore, some of the benefits

which the petitioner is entitled under service regulation have been denied to the petitioner. In such a situation, in my opinion, it is better that this

matter is required to be examined by the respondent-corporation. Therefore, it is directed to the petitioner to send a copy of this petition along

with all the annexures to the respondent-corporation within a period of 15 days from the date of receiving the copy of this order. On receipt of

copy of this order along with all the annexures from the petitioner, the respondent-corporation shall consider the same as representation of the

petitioner for the grievance of non-payment of benefits as per the service regulation and the respondent-corporation shall examine the grievance of

the petitioner and pass an appropriate order in accordance with the law within one month from the date of receiving the copy of the order and

petition.

The petitioner then send a copy of the petition along with letter dated 7th May, 2002 of the learned Advocate. The same is replied by a letter

dated 28th May, 2002 wherein the Corporation has stated that as the procedure with regard to the resignation is complete, as per the prevalent

rules, the same is also published under the Divisional Administrative Order No.683 of 2001 dated 14th August, 2001, the representation of the

petitioner cannot be accepted.

3. The learned Advocate for the petitioner invited the attention of the Court to regulation-50, which is pertaining to resignation, which reads as

under:

Regulation 50:

Except as provided in Regulation 51, no employee shall quit the service of the State Transport, unless he gives a calendar month"s notice in writing,

or reimburses to the State Transport the basic pay for the calendar month in lieu of the notice period, and is permitted by the competent authority

to quit the service;

Provided that the restriction regarding notice period or reimbursement of one month's salary in lieu of the notice period may be relaxed by the

competent authority in accordance with the general or specific rules that may be framed by the administration.

As is clear from the above that regulation-51 is referred to in regulation-50 and regulation-51 provides for retirement of an employee completing

58 years" of age. It also provides that if the competent authority specifically provides then the employee may continue in service for a specified

period. Regulation-51 also provides that the Management can retire an employee from service on the date on which he attains the age of 55 years

or any date thereafter by giving three months" notice. For ready reference, regulation-51 is also reproduced hereunder:

Regulation 51:

Employees of State Transport are liable to compulsory retirement on the date of their completion of 58 years of age unless specifically permitted

by the competent authority to continue in service for a specified period; provided that the competent authority may, after giving 3 months" notice in

writing, require an employee to retire from service on the date on which he attains the age of 55 years or any date thereafter to be specified in the

notice. An employee may, after giving at least 3 months" previous notice to the competent authority, retire from service on the date on which he

attains the age of 55 years or any date thereafter to be specified in the notice;

4. Both these regulations do not deal with the aspect of `voluntary retirement". From the facts narrated hereinabove, it is clear that the petitioner,

due to his personal reasons, was not able to continue in service of the respondent-Corporation and, therefore, wanted to retire. But then, only on

account of his insufficient knowledge of the technical terms, which are to be used, in stead of writing `VOLUNTARY RETIREMENT", he wrote

`voluntary resignation". A judicial notice can be taken of the fact that there is no term like `voluntary resignation", and, therefore, the authorities

ought to have read the petitioner's application dated 11th May, 2001 as an application for `voluntary retirement", unless there was some valid

reasons prohibiting the authorities from treating the said application as an application for `voluntary retirement". This approach was warranted, more particularly, when there is a vast difference between the benefits received by an employee in the event, he resigns and in the event, if he opts for `voluntary retirement". It is easy to say that an employee should have been aware of the two different situations of `resignation" and `voluntary retirement" and should have been more careful in making an application. It can also be contended that once an employee makes an application for `voluntary resignation", the Corporation was within its right to accept the same as it is. But then, the respondent-Corporation is a limb of the State and the State is a welfare state, which is wedded to the welfare of the people at large, including that of its employees, and, therefore, even if the petitioner had committed an error in mentioning `voluntary resignation" instead of `voluntary retirement", he should have been conveyed that he has committed a mistake that he should write `voluntary retirement" instead of `voluntary resignation". The clarification, which was sought for and obtained from the petitioner on 20th June, 2001, was obtained half heartedly. As is clear from that writing that the petitioner was all the way toiling under an impression that if he wants his offer to be accepted, he must remain on duty in the last month of the period mentioned in his offer. It is apparent from that writing that the petitioner was never explained and made to understand that what is required to be done by him is to change the word, `resignation", to `retirement".

5. In that view of the matter, this Court is of the considered opinion that the respondent-Corporation ought to have taken a pragmatic approach in the matter and should have of its own converted the application for `voluntary resignation" to an application for `voluntary retirement". The management of the respondent-Corporation, which is a limb of the State, which is under an obligation to act for the optimum welfare of the people, including its employees, ought not to have denied the benefits flowing from the voluntary retirement.

6. From the facts of this case, it is deemed fit that the Vice Chairman and the Managing Director of the respondent-Corporation be directed to look into the matter of this nature and see to it that in future, such type of difficulty does not arise. If necessary, a circular be issued to all the heads

of the department to route such applications through the Labour Welfare Officer, who is meant for looking after the welfare of the labour force.

This type of steps are required, more particularly, because the labour force is not so well educated.

7. In view of the aforesaid discussion, the present petition is allowed. The respondent-Corporation is directed to treat the application of the

petitioner dated 11th May, 2001 as an application for `voluntary retirement" and grant him all the benefits flowing from the same in accordance

with law. It is clarified that only because the petitioner has used the words, `voluntary resignation", in his application, the petitioner should not be

deprived of any benefits, which he is otherwise entitled to on his `voluntary retirement". Rule is made absolute. No order as to costs.

8. Taking into consideration the fact that the petitioner is suffering from number of diseases like heart disease, diabetes, stone in gall-bladder and

what not, the respondent-Corporation is directed to expedite the procedural formalities and to see to it that financial benefits reach to the petitioner

within three months from the date of the receipt of writ of this Court.