
(1992) 05 GUJ CK 0011
In the Gujarat High Court

Sanjivkar Shantikar Christian

APPELLANT

Vs

Collector

RESPONDENT

Date of Decision : 08-05-1992

Acts Referred:

Bombay General Clauses Act, 1904 — Section 10
Constitution of India, 1950 — Article 226

Citation : (1992) 2 GLR 1192

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—By means of this petition under Article 226 of the Constitution of India, the petitioner has questioned the correctness of the decision taken by the respondent and communicated to the petitioner by one telegram on 11th September, 1989 refusing to accept the petitioner's resignation from service tendered on 9th August, 1989,

2. The facts giving rise to this petition move in a narrow compass. The petitioner was at the relevant time working as Deputy Mamlatdar at Mahuva (District: Surat) under the respondent. On the ground of his ill-health he tendered his resignation from service on 9th August, 1989. He gave therein one month's notice for its acceptance. He wanted his resignation to be effective from 9th September, 1989. A copy of his resignation letter is at Annexure "A" to this petition. As transpiring therefrom, he submitted his resignation through his immediate superior, that is, the Mamlatdar at Mahuva. As transpiring therefrom, the Mamlatdar at Mahuva sent his resignation to the respondent on 9th August, 1989 itself. As further transpiring from the resignation letter at Annexure "A" to this petition, it appears to have been received in the office of the respondent on 10th August, 1989. It appears that nothing was heard till 8th September, 1989 with respect to the resignation letter at Annexure "A" to this petition. The petitioner thereupon gave one application on 8th September, 1989 to the Mamlatdar at Mahuva praying for his release from service with effect from 9th September, 1989 as the notice period for his resignation came to an end on 9th

September, 1989. It appears that one telegram was received by the petitioner from the respondent informing that his resignation was not accepted due to pendency of some enquiry against him. That telegram appears to have been delivered on 11th September, 1989. Its copy is at Annexure "C" to this petition. It appears that, thereupon, the petitioner made representation to the respondent on 12th September, 1989 requesting him that he ought to be considered as relieved with effect from 9th September, 1989 as the notice period for his resignation expired on 8th September, 1989. A copy of his representation of 12th September, 1989 is at Annexure "D" to this petition. It appears that thereupon the respondent passed one order on 13th September, 1989 to the effect that the petitioner's resignation could not be accepted as some enquiry is pending against him and that the period of his notice expired on 10th September, 1989. A copy of the order of the respondent passed on 13th September, 1989 is at Annexure "E" to this petition. It appears that the petitioner thereafter addressed one representation to the respondent on 22nd September, 1989 indicating that he received no reply from the respondent with respect to his representation of 12th September, 1989. A copy of his representation of 22nd September, 1989 is at Annexure "G" to this petition. He issued further reminder thereto on 7th October, 1989. Its copy is at Annexure "H" to this petition. It appears that thereupon the respondent issued one memo on 16th October, 1989 indicating therein that the petitioner's resignation could not be accepted as some enquiry was pending against him and the period of notice was to expire on 10th September, 1989 and that the petitioner was given a telegraphic intimation of the non-acceptance of his resignation on 9th September, 1989. A copy of the memo of 16th October, 1989 is at Annexure T to this petition. It appears that the petitioner thereupon made representation on 19th October, 1989 against the memo at Annexure T to this petition. A copy of his representation of 19th October, 1989 is at Annexure "J" to this petition. It appears that he heard or received nothing from the respondent in response to his representation at Annexure "J" to this petition. He thereupon caused to serve one notice to the respondent through his Advocate on 26th December, 1989 calling upon the respondent to accept the petitioner's resignation at Annexure "A" -to this petition. A copy of that notice is at Annexure "N" to this petition. It appears that the respondent caused a reply thereto on 4th January, 1990. A copy of the reply is at Annexure "O" to this petition. The petitioner has thereupon invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for redressal of his grievance against non-acceptance of his resignation by the respondent.

3. In this connection it would be quite proper to look at Rule 33A of the Bombay Civil Services Rules, 1959 ("the Rules" for brief). Sub-rule (a) thereof enables a Government servant to resign from service by giving a notice of one month in writing to the appointing authority. Sub-rule (2) thereof is quite material for the purpose of this petition and it is therefore reproduced below:

The resignation tendered by a Government servant shall be effective from the

date on which it is accepted by the appointing authority; but if it is not accepted before the expiry of the period of notice for resignation to be given by such servant under Sub-rule (1) it shall be deemed to have become effective on the date of the expiry of such period, unless the Government servant is informed, before such date, that his resignation has been rejected and of the reasons for such rejection:

Provided that the resignation of a Government servant shall not be rejected except in a case where-

(a) any ascertained or ascertainable amount of money is found outstanding against him and payment thereof is not made by him within the period mentioned above;

(b) he is under suspension;

(c) any departmental inquiry or criminal prosecution is contemplated or pending against him.

The other provisions of Rule 33A of the Rules are not relevant for the present purpose. It becomes clear from the provisions of Sub-rule (2) of Rule 33A of the Rules that, if the resignation is not accepted by the appointing authority on the grounds mentioned in the proviso thereto, an intimation in that regard has to be given before the expiry of the period of notice for resignation. Sub-rule (2) of Rule 33A of the Rules contains a deeming fiction of acceptance of the resignation if no intimation as to its acceptance is given to the concerned Government servant before the expiry of the notice period. It is needless to repeat that the notice period for resignation would be one month, as the petitioner had admittedly put in more than one year's service on the date of his tendering his resignation from service on 9th August, 1989.

4. The word "month" has been defined in Rule 9(36) of the Rules to mean a calendar month. A calendar month would ordinarily mean the first day of the month till the last day of that month. If the month begins from any date after the first of a month, the month would expire on the corresponding date of the next month as the date of the commencement of the month will have to be excluded in view of Section 10 of the Bombay General Clauses Act, 1904. In the present case the notice of resignation was given on 9th August, 1989. The date of the resignation letter is to be excluded for the purpose of counting the period of one month. In that case the notice period would expire on the 9th of the next month, that is, on 9th September, 1989. Sub-rule (2) of Rule 33A of the Rules enjoins a duty on the appointing authority to communicate non-acceptance of the resignation before the expiry of the period of notice for resignation. In that view of the matter, communication of non-acceptance of the resignation, in the instant case ought to have been intimated on or before 9th September, 1989. It is not in dispute that the telegram conveying intimation regarding non-acceptance of the petitioner's resignation at Annexure "C to this petition was received on 11th September, 1989. That was certainly beyond the prescribed period for

communication of non-acceptance of the resignation.

5. It transpires from the record that the telegram at Annexure "C to the petition was issued on 9th September, 1989. The date on which the telegram issued will not be material in view of the clear language in Sub-rule (2) of Rule 33A of the Rules. As pointed out hereinabove, it enjoins a duty on the appointing authority to inform the Government servant about non-acceptance of the resignation letter before expiry of the notice period. It thus means that intimation about non-acceptance should reach the concerned Government servant before the expiry of the notice period, Mere issuance of communication before the expiry of the notice period will not be sufficient for the purpose of communication of non-acceptance of the resignation letter. What is required to be done is that the communication should reach the concerned Government officer before the expiry of the notice period. It is not done in the instant case.

6. It transpires from the record that the petitioner appears to have intimated to the appointing authority that his resignation should be accepted from 10th September, 1989. The resignation letter at Annexure "A" however shows that he wanted his resignation to be effective from 8th September, 1989. It transpires from the copy of the resignation letter at Annexure "A" to this petition that originally the figure 10 was typed and it was corrected to 8. It is possible that in the original letter of resignation this correction might not have been incorporated. But then, it is the duty of the appointing officer to calculate the exact notice period irrespective of what might have been mentioned by the Government servant in his resignation letter. As provided in Sub-rule (1) of Rule 33A of the Rules, the Government servant is required to give one month's notice for his resignation. As pointed out hereinabove, the petitioner gave his resignation letter on 9th August, 1989. The notice period would therefore expire on 9th September, 1989 irrespective of the fact whether the petitioner erroneously wanted it to expire on 10th September, 1989. In that view of the matter, the communication of non-acceptance thereof ought to have been given to the petitioner on or before 9th September, 1989. It is not done in the instant case. The action of non-acceptance of his resignation is therefore without the authority of law in view of Rule 33A(2) of the Rules.

7. Again, the ground given for non-acceptance is pendency of some enquiry against the petitioner. Shri Raval for the petitioner states at the Bar that till today no enquiry has been instituted against the petitioner. It thus appears that the pendency of enquiry is a ruse for non-acceptance of the petitioner's resignation from service. This cannot be permitted to be done.

In the result, this petition is accepted. The action of the respondent of not accepting the petitioner's resignation from service is hereby quashed and set aside. The respondent is directed to consider the case of acceptance of the petitioner's resignation from service in the light of this judgment. Rule is accordingly made absolute however with no order as to costs on the facts and in the circumstances of the case.