
(2014) 01 GUJ CK 0092
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1248 of 2013 in Special Civil Application No. 12207 of 2012 and Civil Application No. 11422 of 2013 in Letters Patent Appeal No. 1248 of 2013

State of Gujarat

APPELLANT

Vs

Kantilal Uttamram Upadhyay

RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:

Citation : (2014) 01 GUJ CK 0092

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Urshit B. Oza, AGP for the Appellants No. 1, for the Appellant; Dipen Desai, Advocate for the Respondent(s) No. 1, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—This Appeal under clause 15 of the Letters Patent is at the instance of the State of Gujarat being an unsuccessful respondent in a Special Civil Application and is directed against the judgment and order passed by the learned Single Judge dated 1st July 2013, by which His Lordship allowed the writ-application filed by the respondent herein (original petitioner), directing the appellant to take appropriate steps to commute 1/3rd pension in favour of the respondent herein. The facts giving rise to this Appeal may be summarised as under:

The respondent herein (original petitioner) was initially appointed in December 1967 as an Assistant Technical Inspector (Class-III) under the Director, Food and Supplies Department. At a later stage, when an independent corporation in the name and style of the Gujarat State Civil Supplies Corporation was formed in the year 1980, the employees of the above mentioned Directorate were placed under deputation with the Corporation. The orders placing the employees including the respondent herein on deputation were passed in October 1980.

2. The Government for that purpose resolved to call for the options from the deputationists, whether they would prefer to be absorbed and continued with the Corporation or would prefer to be reverted to the parent department or any other department of the State Government.
3. According to the respondent herein, he had submitted his option for being absorbed in service with the Corporation within the time period prescribed for submitting the option.
4. One of the conditions prescribed in the resolution inviting option was to the effect that the employees who desire to continue with the Corporation shall not resign from the service with the Corporation for a period of two years without the permission from the State Government otherwise they would not be entitled for the pensionary benefits.
5. After considering the option exercised by the deputationists, the appellant passed a resolution dated 5th December 1988 absorbing the respondent and other employees in the Corporation. A consequential order dated 13th December 1988 was passed by the Corporation absorbing the respondent and other employees with the Corporation.
6. Similarly, the appellant also passed a resolution dated 16th November 1989 resolving that all those employees who are absorbed in the Corporation vide order dated 5th December 1988 shall be deemed to have retired from the Government service with effect from 4th December 1988.
7. As a consequence of the said orders and resolutions, the respondent was granted and paid all benefits in the year 1991 which had accrued in his favour on account of the resolution dated 16th November 1989, whereby the employees absorbed in the Corporation were deemed to have retired from the Government service.
8. After about three years i.e. on or around 7th December 1994, the respondent, due to personal reasons, resigned from the service of the Corporation. His resignation became effective from 16th January 1995.
9. After a period of about seven years from the date of his retirement, the respondent submitted an application in December 2007 claiming 1/3rd of the commuted pension. The appellant rejected such request of the respondent claiming 1/3rd commuted pension vide order dated 28th June 2012, relying on the resolution dated 1st April 1989. The respondent was informed by the appellant that since he had resigned from the service of the Corporation after having been absorbed, he was not entitled to the benefit of 1/3rd commuted pension.
10. Feeling dissatisfied with the decision of the appellant refusing to grant benefit of 1/3rd commuted pension, the respondent filed a Special Civil Application No. 12207 of 2012.

11. The learned Single Judge took the view that the reliance placed by the appellant on clause 3 of the resolution dated 1st April 1989 for the purpose of refusing 1/3rd commuted pension was completely misplaced and the resolution had no application so far as the claim of the respondent was concerned.

12. The learned Single Judge also took the view that the stance of the appellant that after being absorbed in a public sector undertaking if an employee tenders his resignation then such resignation would entail the consequence of forfeiture of pension was not tenable in law.

13. The learned Single Judge took into consideration all the relevant resolutions, office orders, circulars including the resolutions dated 22nd February 1986, 5th December 1988, 1st April 1989, 16th November 1989 and the order dated 5th December 1988 passed by the appellant as well as the order dated 13th December 1988 passed by the Corporation.

14. The learned Single Judge also took notice of the decision of the Supreme Court in the case of Welfare Association of Absorbed Central Government Employees in Public Enterprises and others Vs. Union of India and another, wherein the Supreme Court had the occasion to consider para materia provisions and took the view that there was a clear cut distinction between 1/3rd portion of pension which can be commuted without any condition and 2/3rd of pension to be received as terminal benefits with conditions attached to it.

15. The learned Single Judge, after giving thoughtful consideration to the matter, allowed the petition filed by the respondent herein and directed the appellant to take appropriate steps to commute 1/3rd pension in favour of the respondent.

16. Feeling dissatisfied with the order passed by the learned Single Judge, the State of Gujarat has come up with this Appeal.

17. Mr. Urshit B. Oza, the learned AGP appearing for the appellant, vehemently submitted that the learned Single Judge committed an error of law in taking the view that the circular dated 1st April 1989 had no application in the present case since the respondent had been absorbed in the Corporation much before the Government Resolution dated 1st April 1989 came into force.

18. The main plank of Mr. Oza's submission is that the respondent would have been entitled to 1/3rd commuted pension only if he would have retired on superannuation with the Corporation but since he had tendered his resignation he is not entitled to claim 1/3rd commuted pension. Mr. Oza placed reliance on the guidelines issued by the Finance Department dated 20th July 2002, wherein it has been stated as under:

The employees/officers absorbed in the public enterprise/board/corporation will not have to be paid the interim additional payment till they are rendering services in the public enterprise/board/corporation. If the employee/officer retire on superannuation from the public enterprise/board/corporation or for any other reasons retire and thereafter not re-appointed/deputed then as per the existing

Government rules and regulations the adhoc additional payment will have to be made.

19. According to Mr. Oza, although the respondent was absorbed in the Gujarat State Civil Supply Corporation but since he had resigned from the Corporation with effect from 16th January 1995, he is not entitled to 1/3rd commuted pension because at the time of his resignation the Government Resolution dated 1st April 1989 was in existence which provides that in case the Government employee absorbed in public sector undertaking/autonomous body resigns after receiving the pensionary benefits, the resignation would be treated as resignation from Government service and as a consequence of the same, the pensionary benefits received under those orders would be liable to be forfeited.

20. In such circumstances referred to above, Mr. Oza submits that there being merit in this Appeal, the same deserves to be allowed and the order passed by the learned Single Judge be set aside.

21. On the other hand, Mr. Dipen Desai, the learned counsel appearing for the respondent (original petitioner) opposed this Appeal and submitted that no error not to speak of any error of law could be said to have been committed by the learned Single Judge in allowing the writ-application, warranting any interference in this Appeal.

22. Mr. Desai submitted that the learned Single Judge was justified in taking the view that the Government Resolution dated 1st April 1989 on which strong reliance has been placed by the appellant is not applicable in the facts of the present case because his client was absorbed in the Corporation with effect from 5th December 1988 and at that point of time his client was being governed by the Resolution dated 20th February 1986.

23. Mr. Desai submitted that the State Government was aware of the fact that the resolution dated 1st April 1989 would not be applicable in the case of his client and that was the reason why the pensionary benefits which were derived were not forfeited in terms of clause 3 of the Resolution of 1989.

24. In such circumstances referred to above, Mr. Desai submits that there being no merit in this Appeal, the same deserves to be dismissed.

25. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration in this Appeal is, whether the learned Single Judge committed any error in passing the order impugned.

26. We first propose to address the main issue, whether the resolution of the appellant dated 1st April 1989 could be made applicable so far as the claim of the respondent for 1/3rd commuted pension is concerned. The entire resolution has been quoted by the learned Single Judge in para 7.8 of the judgment and order impugned and, therefore, we are not quoting the same. However, we propose to quote few lines of the first paragraph of the resolution as, in our

opinion, the language which has been employed in the said resolution makes the position very clear revealing the intent of the State Government. We quote the relevant portion as under:

After careful consideration, Government has decided that in partial modification to the provisions contained in the GRs referred to in the preamble, the cases of the Government employees who elect to be absorbed in an Autonomous Body/ Public Sector Undertaking will be regulated as under:

27. It is evident from the above, more particularly from the language - "the cases of the Government employees who elect to be absorbed" would indicate that all those who would be absorbed after 1st April 1989 would be governed by the said resolution.

28. This aspect has been very well taken care of by the learned Single Judge. In paras 10.1, 10.2 and 11 of the impugned judgment, the learned Single Judge has observed as under:

10.1 On perusal of the resolution, it emerges that the said Clause (3) of the resolution dated 1.4.1989 is not retrospective and it does not and cannot retrospectively wipe out Clause (6) of the resolution dated 20.2.1986 and its effect as well as the promise underlying the said Clause (6) of the resolution dated 20.2.1986, more particularly qua the employees who were already treated as retired from Government's service even before the respondent issued the resolution dated 1.4.1989. On conjoint reading of resolution dated 20.2.1986 and resolution dated 1.4.1989, it becomes clear that the respondent never intended to make said Clause (3) of resolution dated 1.4.1989 retrospective. This aspect becomes clear from the expression (in preamble of resolution dated 1.4.1989) Government employees who elect to be absorbed in an signifies and makes it clear that the said Clause (3) of resolution dated 1.4.1989 is not given, and it does not have, retrospective effect and the said Clause does not apply retrospectively to the cases of the employees who are deemed to have retired (and thereby ceased to be Government employees) from Government service and came to be absorbed in service with the Corporation much before the said resolution i.e. before 1.4.1989. Otherwise, the respondents would have expressly mentioned and the employees who have elected This aspect becomes clear also from the expression if the government makes liberal changes in the rules of pension, then said changes will not be applicable to the absorbed employee but if the employee is in service on the date when the recommendations of pension of Third Pay Commission accepted, then he/she will get benefit otherwise he/she will not get in Clause (6)(F) of the resolution dated 20.2.1986.

10.2 Thus, the said Clause (3) of the resolution dated 1.4.1989 was justifiably not invoked and applied in petitioner's case when he tendered resignation from his service with the corporation and pension sanction order was passed as per declared and applicable policy and now, there is no basis or justification to invoke

and apply said clause to the case of the petitioner.

11. In such situation, it emerges that (a) any order invoking Clause (3) of the resolution dated 1.4.1989 is not passed and any action under the said provision is not taken, and (b) the petitioner's right to claim commuted pension at 1/3rd rate is not affected in view of the relevant provisions and facts of present case, and (c) at the relevant time, i.e. when the petitioner was placed on deputation with the corporation and/or when option to be absorbed in service of the corporation was given and when his option to be absorbed in service of the corporation was accepted and/or even when he was treated as retired from Government service, the said resolution dated 1.4.1989 was not passed/issued and was not in existence, and (d) the provision under Clause (3) of the said resolution is not retrospective, and that (e) the said Clause (3) even otherwise can not retrospectively wipe out Clause (6) of resolution dated 20.2.1986 and/or the promise underlying said Clause (6), and that (f) delay would defeat such action, and that (g) either at the time when the petitioner's resignation in corporation's service was accepted or at the time when the orders sanctioning pension in petitioner's favour was passed and pension was paid or during the interregnum of 15 years, the respondents did not invoke and have yet not invoked Clause (3) of the said resolution dated 1.4.1989 and the respondents did not take and have yet not taken any decision or action forfeiting petitioner's pension under Clause (3) of the said resolution dated 1.4.1989 and that therefore, now, the respondents are not justified in denying or rejecting petitioner's request to commute 1/3rd pension.

29. We are in complete agreement with the observations made by the learned Single Judge in the aforementioned paras of the impugned judgment.

30. The learned Single Judge has also considered the decision of the Supreme Court in the case of Welfare Association of Absorbed Central Government Employees in Public Enterprises (supra) including the judgment of the Supreme Court in Welfare Association of Absorbed Central Government Employees in Public Enterprises and Another Vs. Arvind Verma and Others, , which led the State Government to issue a circular dated 20th July 2002 providing for the determination of the method for fixing the pension of the employees absorbed in the public enterprise/board/corporation.

31. We shall now look into the guidelines/instructions issued by the State Government as regards the procedure to be followed by the department so far as the grant of 1/3rd commuted pension is concerned.

32. Mr. Oza, the learned AGP appearing for the appellant laid much stress on clause 7 of the guidelines dated 20th July 2002 which we have noted earlier but for the sake of convenience we quote the same once again.

The employees/officers absorbed in the public enterprise/board/corporation will not have to be paid the interim additional payment till they are rendering services in the public enterprise/board/corporation. If the employee/officer retire

on superannuation from the public enterprise/board/corporation or for any other reasons retire and thereafter not re-appointed/deputed then as per the existing Government rules and regulations the adhoc additional payment will have to be made.

33. According to Mr. Oza, in the guidelines dated 20th July 2002 there is no reference of resignation but the reference is only of superannuation or retirement for any other reasons.

34. We are afraid, we are not impressed by such submissions canvassed on behalf of the appellant because if the interpretation sought to be put forward by Mr. Oza is accepted, then the entire object with which the decision to grant 1/3rd commuted pension is concerned, in terms of the decision of the Supreme Court, would be frustrated.

35. Before we proceed to interpret the clause on which strong reliance has been placed, we deem it necessary to look into the reasons assigned by the learned Single Judge in paras 7.14 to 7.21.

7.14 The respondents have relied on the provision under clause 3 of the resolution dated 1.4.1989, however, it appears that the respondents have raised said contention as an afterthought after present petitioner submitted the request for 1/3rd commuted pension.

7.15 It is necessary to recall that the petitioner came to be absorbed in service with corporation w.e.f. 5.12.1988 and is deemed to have retired from Government's service w.e.f. 4.12.1988 whereas the resolution came to be issued on 1.4.1989.

7.16 If the respondents were of the view that the said clause (3) of the resolution dated 1.4.1989 was applicable to the case of the petitioner who was already (i.e. much before the date of resolution) absorbed in service with corporation and was deemed to have retired from Government service even before the date of resolution, then, in that event, the respondents would have, at the relevant time and from initial stage, acted in consonance with the said resolution dated 1.4.1989 and in the first instance, the respondent would not have sanctioned and paid pension to the petitioner.

7.17 In present case, it is not in dispute that the petitioner tendered his resignation dated 7.12.1994 from the service of the corporation and his resignation came to be accepted and was made effective from 16.1.1995.

7.18 Thus, the petitioner resigned from service and his resignation became effective from the date subsequent to the date of said resolution dated 1.4.1989. Differently put, when the petitioner tendered resignation and when it was accepted and when it became effective, the said resolution was in existence.

7.19 Despite this fact, the respondents sanctioned and granted pension in favour of the petitioner and during the entire intervening period, the respondents

continued to pay pension to the petitioner, the respondents did not invoke and apply Clause No. 3 of the said resolution dated 1.4.1989 either while sanctioning/ granting pension in favour of the petitioner.

7.20 The fact that at the relevant time the said resolution was not applied to the case of the petitioner and in spite of the said resolution, pension came to be sanctioned and pension was paid to the petitioner as certified by certificate dated 15.12.2011 and until now the respondents have not forfeited petitioner's pension, is sufficient to establish that the objection raised by the respondents at this stage is an afterthought.

7.21 When the pension is not forfeited, question of denying the request for commuted pension would not arise. It is anomalous that a person (petitioner in present case) is entitled for pension (which is paid to the petitioner as certified by certificate dated 15.12.2011) despite resolution dated 1.4.1989 but he is not entitled for commuted pension. Such contention cannot be accepted.

36. We are in agreement with the line of reasoning adopted by the learned Single Judge that the question of denying the request for commuted pension would not arise, more particularly when the pension has not been ordered to be forfeited. The learned Single Judge is also right in observing that it is preposterous to suggest that a person is entitled for pension but is not entitled for commuted pension.

37. In our opinion, clause 7 of the guidelines dated 20th July 2002 on which strong reliance has been placed, in no manner could be interpreted as suggested by Mr. Oza, the learned AGP appearing for the appellant.

38. There are two pertinent features of clause 7. First, an employee would be entitled to 1/3rd commuted pension if he retires on superannuation from the corporation, and secondly, for any other reason retires and thereafter is not re-appointed/deputed.

39. The core issue is, whether the absence of the word "resignation" will make any difference as suggested by the learned advocate appearing for the appellant. In our opinion, "for any other reasons retire" would include resignation from the corporation and this interpretation must be read in conjunction with the other reasonings we have assigned, more particularly so far as the aspect of applicability of the resolution dated 1st April 1989 is concerned.

40. In this connection, we may quote with profit a Division Bench decision of the Delhi High Court in the case of Mr. Ashwani Kumar Sharma Vs. Oriental Bank of Commerce, speaking through S.B. Sinha, C.J. (as His Lordship then was).

41. One of the questions which fell for the consideration of the Bench was, whether the terms "resignation" and "voluntary retirement" were synonymous.

42. The Court made the following observations in paras 32 to 36, which, in our opinion, are directly related to the facts of the case in hand.

32. Retirement or resignation has also been held to be almost synonymous. In *The Garment Cleaning Works Vs. Its Workmen*, it has been held that qualifying period for gratuity should be different in case of retirement or resignation and in case of dismissal for misconduct. In that case also, thus, retirement or resignation has been held to be at par for the purpose of grant of retiral benefits. In the matter of gratuity, why a long minimum period for earning the same in the case of voluntary retirement or resignation has been provided, the Apex Court has answered in *British Paints (India) Ltd. Vs. Its Workmen*, as thereby the workmen may leave one concern for another after putting in the minimum service qualifying for gratuity. There again, the voluntary retirement or resignation had been held to be pat par.

33. A beneficial scheme like payment of pension to a person whose services come to an end by agreement of the parties, stand completely on a different footing than cessation of such employment on the ground of misconduct or otherwise. Such cessation may not come into effect, as noticed hereinbefore, inter alia:

a) In case of resignation;

(b) Voluntary retirement; and

c) Compulsory retirement by way of punishment.

34. It will be preposterous to suggest that although in case of resignation, having regard to the fact that a person has had an unblemished record of service, would be deprived from pension. At least a part of the pension will be paid to an employee who had been found guilty of misconduct and had been imposed with a punishment of compulsory retirement.

35. The matter may be considered from another angle. Upon resignation, the entire service period is lost. Such a concept that a person gets the benefit of the entire service period for all intent and purport, would be unconstitutional. If in case of a contributory provident fund scheme, he would have been entitled to the benefit of the contribution made by the employer, we do not find any reason as to why in a case where the pension scheme is in force, he would be deprived there from. A statute, and in particular, subordinate legislation must be read reasonably.

36. For the purpose of interpretation of a beneficent statute, if the courts take recourse to the literal interpretation, the scheme may result in absurdity or manifest injustice. What is necessary in a situation of this nature would be to apply the rules of purposive construction.

43. In *J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others*, the Supreme Court in para 9 made the following observations:

9. The meaning of term "resign" as found in the Shorter Oxford Dictionary includes "retirement". Therefore, when an employee voluntarily tenders his

resignation it is an act by which he voluntarily gives up his job. We are, therefore, of the opinion that such a situation would be covered by the expression "voluntary retirement" within the meaning of Clause (i) of Section 2(s) of the State Act. In *Santosh Gupta Vs. State Bank of Patiala*, Chinnappa Reddy, J. observed as under:

Voluntary retrenchment of a workman or the retrenchment of the workman or reaching the age of superannuation can hardly be described as termination, by the employer, of the service of a workman.

(Here the word "retrenchment" has reference to "retirement".)

The above observation clearly supports the view which commends itself to us.

44. Thus, applying the aforementioned principles of law, we hold that the words employed in clause 7 "for any other reason retires" would include resignation and the absence of the word "resignation" in clause 7 would not make any difference. We are saying so because if the case of the appellant is that clause 3 of the resolution dated 1st April 1989 is applicable, and on being absorbed in service with the Corporation, was deemed to have retired from the Government service, then in that event, the appellant, right from the initial stage, would have acted in consonance with the said resolution dated 1st April 1989 and would not have sanctioned and paid pension to the respondent.

45. Mr. Oza made desperate efforts to convince us that the decision of the Delhi High Court referred to above wherein retirement or resignation has been held to be synonymous would have no application in the present case because there was no scheme of voluntary retirement which could have been availed of by the respondent herein. To put it in other words, the submission of Mr. Oza is that if there would have been a scheme for voluntary retirement, and instead of opting for voluntary retirement he would have tendered resignation, then perhaps it could have been argued that such resignation could have been treated at par with the voluntary retirement.

46. We are not impressed by such submission canvassed by Mr. Oza, more particularly in view of our interpretation as regards the applicability of the resolution dated 1st April 1989 is concerned.

47. For the foregoing reasons, we hold that there is no merit in this Appeal and the same deserves to be dismissed.

48. In the result, this Appeal fails and is hereby dismissed. However, on the facts and in the circumstances of the case, there shall be no order as to costs.

49. In view of the order passed in the main Appeal, the connected Civil Application has become infructuous and is accordingly disposed of.

50. After this judgment was pronounced, the learned AGP appearing on behalf of the appellant prays for stay of operation of our judgment. In view of what have been stated above, we find no reason to stay our order. The prayer is refused.