

**(2010) 04 GUJ CK 0016**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 4955 of 2010

S.V. Vaghasia

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

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**Date of Decision :** 22-04-2010

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 311  
Gujarat Civil Services (Discipline and Appeal) Rules, 1971 — Rule 10, 9  
Gujarat Civil Services (Leave) Rules, 2002 — Rule 16(2)

**Citation :** (2010) 04 GUJ CK 0016

**Hon'ble Judges :** K.S. Jhaveri, J

**Bench :** Single Bench

**Advocate :** Paresh Upadhyay, for the Appellant; Government Pleader, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

K.S. Jhaveri, J.—By way of this petition, petitioner has prayed for following reliefs:

7(A). quash and set aside the order dated 28.05.2008, Annexure A to this petition and further be pleased to direct the respondent authorities to reinstate the petitioner in service with all consequential benefits; and

(B) declare and hold that the Rule 16(2) of the Gujarat Civil Services (Leave) Rules, 2002 as amended by the Notification of the Government dated 01.12.2006 called as the Gujarat Civil Services (Leave) (Second Amendment) Rules, 2006, is unconstitutional and illegal, and

2. The facts in brief are that petitioner joined the service of the respondent authorities on 26.05.1986 on the post of Drugs Inspector and he got promotion to the post of Senior Drugs Inspector in the year 1999. The petitioner put in 20 years of service which entitle him to apply for voluntary retirement. As the petitioner proposed to go abroad, he filed an application on 12.04.2006 for

availing earned leave from 17.04.2006 to 20.01.2007 which came to be allowed by the respondent authority vide No Objection Certificate dated 05.05.2006. Thereafter, on 08.11.2006, petitioner made application seeking extension of leave to which the respondent authority did not respond. Again on 06.03.2007, petitioner applied for leave of 264 days which also remained unresponded and the petitioner left India for abroad during which time, petitioner was transferred by the respondent authorities vide order dated 14.05.2007. The petitioner, was vide communications dated 18.08.2007, 23.09.2007, 27.03.2008 was informed by the respondent authorities to join his duties which was replied to by the petitioner on 25.08.2007 and 01.04.2008.

3. The petitioner was issued a show cause notice dated 08.04.2008 calling for explanation as to why it shall not be deemed that the petitioner has resigned from government service because of his absence for more than one year. The said show cause notice was replied to by the petitioner vide his letter dated 27.04.2008 wherein he undertook to join service on or before 15.06.2008. Without taking into consideration the undertaking of the petitioner contained in his letter 15.06.2008, respondent authorities passed the impugned order dated 28.05.2008 on the basis of Gujarat Civil Services Rules (Leave) (Second Amendment), 2006 published vide notification dated 01.12.2006, whereby it was deemed that petitioner has resigned from the government service. Thereafter, petitioner made representation to the respondent authorities on 16.06.2008 which was replied to on 24.06.2008. Thereafter, petitioner time and again requested the authorities to reconsider his case but of no avail. On 30.06.2009, petitioner made an application to the respondent authorities to reconsider its decision which also was of no avail. If the petitioner would not have been deemed as resigned vide the impugned order he was having fair chance of promotion on the next higher post of Assistant Commissioner. Soon after the termination of the petitioner, in September/October 2008, persons junior to the petitioner were promoted on the post of Assistant Commissioner.

4. The first contention raised by the learned Counsel for the petitioner is that petitioner replied to the show cause notice on 27.04.2008 wherein he had undertaken that he will resume on or before 15.06.2008 and still however, the respondent authorities passed the impugned order on 28.05.2008 with a view to deprive the petitioner of his promotion and was not allowed to resume the duty as per his undertaking. Counsel for the petitioner has also submitted that though the circumstances were beyond the control of the petitioner, respondent authorities passed the impugned order dated 28.05.2008 without considering the difficulty of the petitioner and, therefore, the impugned order deserves to be quashed and set aside. The learned Counsel for the petitioner has further contended that the Rule 16(2) of Gujarat Civil Services (Leave) Rules, 2002 on the basis of impugned order dated 28.05.2008 terminating the petitioner is passed by the respondent authorities, is contrary to Rules 9 and 10 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 in as much as the resignation which is a major penalty is required to be imposed after following

mandatory procedure under the Gujarat Civil Services (Discipline and Appeal) Rules and in that view of the matter such a wide power exercised by the State Government is arbitrary and violative of Article 14 read with 311 of the Constitution of India. It is further contended that petitioner made representation to the respondent authorities on 16.06.2008 which was replied to by the respondent authorities on 24.06.2008. It is also contended by counsel for the petitioner that, petitioner time and again requested the authorities to reconsider his case but of no avail. Then on 30.06.2009 also, petitioner made an application to the respondent authorities to reconsider its decision which also was of no avail.

5. As regards contention of learned Counsel for the petitioner that impugned order is passed in violation of Articles 14 and 16 of the Constitution of India, in my view, Gujarat Civil Services (Discipline and Appeal) Rules, 1971 provides that this power is to be exercised in case of misconduct in office and in case where the employee deliberately advances on leave without sanction from his/her superiors or without sanctioned leave to proceed on a long leave which mismanages the administration of the State Government. The fact which is not in dispute is that petitioner was on leave beyond the sanctioned leave and the only question which is left open for the consideration of this Court is whether the power by virtue of Gujarat Civil Services (Leave) Rules, 2002 is exercised rightly or not? Under these Rules, admittedly the facts are not to be proved since the employee is on leave, prescribed period of leave is defined under Clause A and B whereas in the Discipline and Appeal Rules, it has been referred by the counsel for the petitioner as misconduct in the office, which is required to be proved. In my view the deemed resignation is just and proper in as much as the said decision was taken by the respondent authorities in the interest of administration. Merely because such a decision is in case of the petitioner and that too in the interest of administration, it cannot be termed as ultra vires to the Constitution of India. It is in the interest of the administration of the State Government or in the administration of the office, the Rules are framed. In my view, the action of the respondent authorities in passing the impugned order is just and proper to control any government servant.

As regards the other contention of the counsel for the petitioner that petitioner made representation on 16.06.2008 was not allowed by the respondent authorities, it is apparent from the record that petitioner accepted his resignation (impugned order) dated 28.05.2008 and then made representation before the respondent authorities. Therefore, in my view, the petitioner ought to have challenged the order impugned immediately instead of waiting upto year 2009, for the representation to be decided by the respondent authorities.

6. Counsel for the respondent has relied on the case of C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another, In the said case, Hon''ble Apex Court in paras 10 and 14 has observed as under:

10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred

by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

14. We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for "consideration". If the representation on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing "consideration" of such claims.

The Hon''ble Supreme Court in the above referred judgment has held that representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. It is also held that if the representation is stale, or does not contain particulars to show that it is regarding a live claim, courts should resist from directing "consideration" of such claims. Therefore, as per the observation made by the Hon''ble Court, this Court cannot grant relief as prayed for by the petitioner.

7. In the premise above, I am of the view that this petition which is preferred after a lapse of two years of his deemed resignation being devoid of any merits, deserves to be dismissed and is, accordingly, dismissed.