

(2004) 07 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 4113 of 2002 (Appellate Side) and Suo Motu W.P. No. 16 of 1992 (O.O.C.J.)

Union of India (UOI)

APPELLANT

Vs

Sumati Pandurang Padave

RESPONDENT

Date of Decision : 09-07-2004

Acts Referred:

Railway Services (Pension) Rules, 1993 — Rule 426(1)

Citation : (2004) 4 ALLMR 486 : (2004) 5 BomCR 6 : (2005) 1 MhLj 329

Hon'ble Judges : S.R. Sathe, J;F.I. Rebello, J

Bench : Division Bench

Advocate : Suresh Kumar and Suchitra Kamble, in W.P. No. 4113 of 2002 and Sandeep Marne, Amicus Curie in W.P. No. 16 of 1992, for the Appellant; Sandeep Marne, Amicus Curie in W.P. No. 4113 of 2002 and Suresh Kumar and Suchitra Kamble, in W.P. No. 16 of 1992, for the Respondent

Judgement

F.I. Rebello, J.—Both these petitions can be disposed of by a common judgment as the issue involved is the same. A few facts may be set out. Smt. Sumati Pandurang Padave is the widow of a deceased railway employee who may be designated as CPF employee. He resigned from the services of the Railways. Subsequent to his death, his widow applied for ex-gratia payment in terms of the Office Memorandum (O.M.) dated 15th June, 1988 issued by the Department of Pension and Pensioners' Welfare Board, Government of India, which provided for grant of ex-gratia payment to families of deceased CPF retirees. The relevant portion of the said O.M. may be reproduced hereunder :-

"The undersigned is directed to state that the recommendation of the 4th Central Pay Commission in part II of its report regarding grant of relief to the families of deceased civilian Central Government Employees, who were governed by Contributory Provident Fund Scheme, has been under consideration of Government. The President is pleased to decide that the widows and dependant children of the deceased CPF beneficiaries who had retired from service prior to 1-1-1986 shall be granted ex-gratia payment of Rs. 150/- per month with effect

from 1-1-1986 or from the date following the date of death of the deceased employee whichever is later."

The Railways also implemented the same pursuant to the letter dated 30-6-1988 and subsequent letter of 13-7-1988. A clarification was issued on 9th March, 1989 and the relevant portion reads as under :-

"It is clarified that the families of railway employees who were governed by SRPF (C) Rules and had resigned, are not eligible for ex-gratia payment on the analogy that the families of railway employees governed by the Pension Rules are not eligible for family pension under the Pension Rules under similar circumstances. In this connection your attention is invited to para 3(4) of the Department of Pension and Pensioners" Welfare Office Memorandum dated 30-6-1988 forwarded under Board"s letter No. PC-IV/87/87/IMP/I dated 30-6-1988. The families of those employees who were compulsorily retired or medically incapacitated are eligible for ex-gratia payment."

These circulars came up for consideration before various Benches of the CAT. The matter was also considered by the Full Bench of the Central Administrative Tribunal in the case of Smt. Shobha M. Zende v. Union of India and Ors., 1997-2001 A. T. Full Bench Judgments 292. The Full Bench on the facts of that case, observed as under :-

"The husband of the applicant was not a retired Railway servant, but a servant who had resigned from his post. The applicant, was, therefore, rightly denied pension, family pension and gratuity in respect of her deceased husband. Even if he had retired from service he could not claim pension as he was a CPF optee."

The Full Bench then noted various circulars issued which directed payment of ex-gratia to those who had retired from the Indian Railways prior to 1-4-1957 on a contributory Provident Fund system after completing 20 years" continuous service. Considering that, the Full Bench noted that the authority could decide on the facts of each case before it, whether the letter of resignation could be treated as letter for voluntary retirement and accordingly take action.

2. The widow in this case had filed original application No. 809 of 1999 before the Central Administrative Tribunal. It may be mentioned that earlier to that this Court had taken a suo motu notice of the grievance and had entertained a petition which was numbered as Suo Motu Writ Petition No. 16 of 1994. The learned Tribunal in its order of 24-12-1999 on facts found that the deceased husband had worked for the railways for the period 6-5-1954 to 8-12-1975 i.e. for a period of 21 years 7 months and 2 days. At the end of the aforesaid period, applicant tendered his resignation. The case of the widow was that the scheme of voluntary retirement was not in vogue at the relevant time and as such, the deceased husband was constrained to resign. Had the scheme been available it would not have been necessary for him to resign, but he would have retired voluntarily. The submission before the Tribunal was that the resignation should be considered as one of voluntary retirement or retirement on superannuation.

By the impugned order of 4th May, 2000 the learned Tribunal relying on other orders passed where other Benches had taken a view that the widow and dependent children of an ex-employee are entitled to the grant of ex-gratia payment provided the employee who has resigned had put in a qualifying period of service prior to his resignation, accordingly allowed the original application No. 671 of 1999 which is the subject matter of challenge in the present petition. Reliance was also placed in the case of J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others, . In that judgment, the Apex Court had held that the resignation amounts to voluntary retirement and granted benefit of pension. However it may be noted at that stage itself that the discussion was in the context of whether resignation would amount to retrenchment within the meaning of Section 2(s) of the U. P. Industrial Disputes Act, 1947. The reliance placed therefore on that judgment by various Benches of the Tribunal was misplaced.

3. On behalf of the Union of India, learned Counsel points out that the resignation and retirement are two different concepts. Retirement normally is on superannuation. It would also include other cases like retirement on ground of medical unfitness but it could never include resignation. The Circular was clear that the benefit of ex-gratia payment was not available to those who had resigned from service. The clarification issued thereafter on 9th March, 1989 made it equally clear that those who resigned are not entitled for ex-gratia payment. Learned Counsel also placed reliance on the subsequent judgment of the C.A.T. in the case of Kashinath Jadhav v. The Divisional Railway Manager (DRM) dated 24th December, 1998. It is pointed out that the Tribunal has now taken a view that those who have resigned their widows are not entitled for ex-gratia payment. The learned Tribunal held that as the subsequent circular had been issued on 13-11-1998, the circular dated 27-1-1998 will have to be read and construed in terms as clarified by later circular dated 13-11-1998, and held that in view of circular dated 13-11-1998 the person who had resigned would not be entitled to the benefit of ex-gratia payment. For all the foresaid reasons, it is submitted that the impugned order is liable to be set aside.

As the widow was not represented, we asked Mr. Marne, the learned Counsel of the Court to assist the Court as amicus curie. The learned amicus curie had brought to our attention various orders passed by the Tribunal. It is pointed out that all those orders have been implemented by the Railways and as the Railways have accepted the orders of the Tribunal and as such should not be allowed now, on the facts of the present case, to deny the benefits to the widow. It is therefore submitted that the petition filed by the Railway should be rejected.

4. Rule 426(I)(i) of the Railway Pension Rules 1950 reads as under :--

"Rule 426(I)(i) Resignation from service or dismissal or removal or compulsory retirement from it, also entails forfeiture of past qualifying service."

It is thus clear from a reading of the said rule that in the event an employee

resigns the entire service stand forfeited insofar as pensionary benefits are concerned and as such, the person is not entitled to the pension. Therefore by operation of this rule designees are not entitled to pension. What then is the meaning of resignation.

The Apex Court had considered a similar rule of forfeiture of service in the case of Reserve Bank of India and Anr. v. Cecil Dennis Solomon and Anr., 2004(1) S. C. Services Law Judgments 532. In paragraph 9 of the judgment, the Apex Court was pleased to observe as under :-

"In service jurisprudence, the expressions superannuation, voluntary retirement, compulsory retirement and resignation convey different connotations. Voluntary retirement and resignation involve voluntary- acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, same is not denied. In case of the former, permission or notice is not mandate, while in case of the latter, permission of the concerned employer is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary. In Punjab National Bank Vs. P.K. Mittal, , on interpretation of Regulation 20(2) of the Punjab National Bank regulations, it was held that resignation would automatically take effect from the date specified in the notice as there was no provision for any acceptance or rejection of the resignation by the employer. In Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, , it was held in the case of a Judge of the High Court having regard to Article 217 of the Constitution that he has an unilateral right or privilege to resign his office and his resignation becomes effective from the date which he of his own volition, chooses. But where there is a provision empowering the employer not to accept the resignation, on certain circumstances e.g. pendency of disciplinary proceedings, the employer can exercise the power."

In the case of M. R. Kulkarni and Ors. v. Bank of Maharashtra and Ors. in W. P. No. 3614 of 1997 decided on 13th February, 2004 a Division Bench of this Court had also an occasion to consider the similar service regulation in the Bank of Maharashtra Pension Regulation, to which one of us (Rebello, J.) was a party. Construing similar terms and expression it was held that the considering the regulation of forfeiture of service a person who had resigned would not be entitled to pension under the Banks Regulation and that resignation and retirement are two different expressions in service jurisprudence.

5. From the above discussion, what emerges is that the Pension Rules itself places the resignee and retiree differently. In the case of resignation, services stand forfeited. If the services stand forfeited, the employee will not be entitled

to pension as he would not be completing the requisite number of years for grant of pensionary benefits. Apart from that, the benefit given by the O.M. of 13th June, 1988 was restricted to only CPF beneficiaries who had retired from Service prior to 1-1-1986. It is not possible to read the word "resignation" into the word "retirement". That position was thereafter clarified by subsequent letter of the Railway Board dated 27-12-1988 communicated by a letter of 9th March, 1999. It is thus clear that the CPF optees who had resigned from services, their widows would not be eligible for ex-gratia payment in terms of the O.M. dated 13th June, 1988.

6. For the aforesaid reasons, rule will have to be made absolute in Writ Petition No. 4113 of 2002. In the light of that, so far as Writ Petition No. 4113 of 2002 is concerned, rule is made absolute in terms of prayer clause (a).

As we have held that the person who has resigned would not be entitled to ex-gratia payment, rule stands discharged insofar as Suo Motu Writ Petition No. 16 of 1994.

We must place on record the valuable assistance rendered to us by the learned amicus curie.

7. Parties to act on an ordinary copy of this order duly authenticated by the Personal Secretary or the Associate.