

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15371 of 2004

Date of Decision: 30.11.2004

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UNION OF INDIA

Versus

HANSRAJ KARSAN JADHVANI

(for full cause title, see next sheet)  
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Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Petitioner Mr.Adv.R.M.Vin  
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PER: HON'BLE THE CHIEF JUSTICE (ORAL):-

This petition is directed against the order of the Central Administrative Tribunal, Ahmedabad Bench (CAT) dated 18.3.2004 passed in O.A.No.498 of 2002.

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#. Shri Hansraj Karsan Jadavani (respondent) was a Carpenter with the petitioner. Having completed 21 years of service, he sent communication dated 15.7.1976

(Annexure-C). Some time, thereafter he claimed pension / ex-gratia pension but the petitioner rejected the same

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Whether reporters of Local Papers may be allowed to see the Judgment?

vide order dated 19.8.2000. This order was challenged by the respondent through OA/661/2000. By order dated 19.6.2001, CAT directed the petitioner to examine the case of respondent in light of CAT Full Bench decision in SMT.BHOBA M. ZENDE V/S UNION OF INDIA & ORS. [ 1997 (2) ATJ 305 ] and to pass appropriate order. Consequent to this direction, matter was considered by the petitioner and order passed on 28.8.2002. This order was subject matter of challenge in Original Application No.498 of 2002.

#. Giving consideration to the matter in the context of decision in case of SMT.SHOBHA M. ZENDE (Supra) and decision of this Court in Special Civil Application No.1330 of 2004 - UNION OF INDIA V. DALSUKH NARAN decided on 3.2.2004, CAT held that communication of respondent dated 15.7.1976 could not be treated as resignation. He sought relief, therefore, could be treated voluntary retirement. Consequently, Original Application was allowed directing the respondents to calculate and make payment of ex-gratia from January, 1999 onwards, payable within period of three months from the date of receipt of copy of order, otherwise, interest at the rate of 9 % p.a. on the calculated amount from the date the period of three months expires till the date of payment.

#. Through this petition, this order has been assailed by the petitioner. Shri R.M.Vin, learned counsel for Union of India submits that communication of respondent dated 15.7.1976 is resignation, therefore, he is not entitled to pension. Learned counsel refers to the Apex Court decision in RESERVE BANK OF INDIA & ANR V. CECIL DENNIS SOLOMON & ANR [ JT 2003 (10) SC 156 and submits that the Apex Court has held that in service jurisprudence, the expressions "Superannuation", "Voluntary Retirement", "Compulsory Retirement" and "Resignation" convey different connotations and operated differently. Respondent having resigned voluntarily, relationship of "Master" and "Servant" has ended, therefore, entitlement to pension did not survive. Further, strong reliance is placed on Railway's instructions dated 27.11.1998 / 7.12.1998 to submit that ex-gratia payment is not admissible to those SRPF(C) beneficiaries who have retired from service other than on

superannuation viz. on medical invalidation, voluntary retirement, compulsory retirement as a measure of penalty, premature retirement, retirement on permanent absorption in or under a Corporation of Company or body corporate or incorporate etc.. Therefore, employees who have retired from service otherwise than, on superannuation cannot be sanctioned ex-gratia payment. In other words, the submission is that employees who retire on superannuation and have rendered atleast 20 years of continues service prior to superannuation are entitled to ex-gratia payment.

#. In UNION OF INDIA V. DALSUKH NARAN - Special Civil Application No.1330 of 2004 decided on 3.2.2004, we held that dominant intention behind tendering resignation / voluntary retirement etc. should form basis for understanding whether it is a case of voluntary retirement or resignation. In JAGPAL SINGH V. DELHI TRANSPORT CORPORATION, 1997 (70) DLT 435, it is held that an employee cannot be denied qualifying service for earning pension only because he resigns. Relying interalia on the decision of the Apex Court in D.S.NAKARA AND ORS. V. UNION OF INDIA, AIR 1983 SC 130 it was held

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"10. If a person is entitled to pension on retirement after completing qualifying service, it follows that, the said benefit is a benefit earned by the employee because of the service rendered by him. Can it be said that the benefit so earned ceases to be a benefit only because at the end of the qualifying service, the employee resigns? If that is to be the law, will it not be penalizing such a person for resigning from service, resulting in the forfeiture of the benefit earned. The letter dated September 2, 1993 [Annexure-2] written to the petitioner proceeds on the assumption that benefit of past service will be lost on resignation as per Rule-26. But it fails to consider the implication of Rule-48 and the need to treat all employees who rendered qualifying years of service on equal footing. It should be noted that the petitioner had no occasion to persuade the first respondent - corporation to retire him by applying a Rule similar to Rule-48 of the Rules. Question of exercising option did not arise in the year 1986 by which time the petitioner had resigned from service, however, the result of the resignation was in no way different from the normal retirement. In both

the cases the employee concerned will be going out the actual service after rendering a requisite of years of "sic" qualifying service. In the circumstances, I am of the view that the term "retired w.e.f. August 3, 1981" found in Clause-3 of the Office Order No.16 should include a person who resigned also w.e.f. August 3, 1981 after rendering qualifying years of service of 30 years as stated in Rule-48 of the Rules. I am of the view that the phraseology used in clause-3 of the Scheme should be understood in a liberal sense so as to extend the benefit to all those who rendered the qualifying service and there cannot be any artificial distinction between a person who retired and a person who resigns."

#. Finding ourselves in respectful agreement with the above decision penultimate paragraph-10 of our judgment rendered in Special Civil Application No.1330 of 2004 records that;

"10. We are in respectful agreement with these views. After the employee had put in qualified service, he became entitled to retiral benefits of which, neither he nor his heirs can be deprived. Approach to the contrary would be unjust, unreasonable and unconstitutional. The two documents, Annexure A & B, which even otherwise are non statutory, cannot take away the legitimate right of the respondent. The petitioners can consider the directions which the CAT passed in penultimate paragraph of its order, in the light of decision passed by it and this Court. Therefore, the contention that it cannot be worked after the death of deceased employee cannot be accepted."

#. Adverting to the facts of the case, respondent is a Carpenter. He has served the petitioner for 20 years, therefore, qualified for pension. Perusal of communication dated 15.7.1976 demonstrates that it is not a case of resignation. Respondent has nowhere said that he tenders resignation from service, therefore, be relieved. He simply says that he be relieved from service since he wished to do private business. Person having put in 20 years of qualifying service for pension is not expected to leave service without availing service benefits which accrued / earned by that time. Giving meaningful and liberal interpretation to the communication, we are of the opinion that it is a case of superannuation and not a case of resignation. In the

case before the Apex Court RESERVE BANK OF INDIA & ANR. V. CECIL DENNIS SOLOMON & ANR (JT 2003 (10) SC 156 regulation provided for forfeiture of the entire past service in case of resignation. But no such regulation has been brought to our notice, nor the order how the communication of the respondent has been treated as resignation.

#. Consequently, the result of aforesaid discussion is that respondent's communication dated 15.7.1976 is "superannuation" and not "resignation", therefore, entitled to pensionary benefits. Railway instructions pressed into service by the petitioner are neither statutory nor in tune with spirit of Articles 14, 16 and 21 of the Constitution of India. Petitioner can not deprive any employee from receiving pension after putting in qualifying service even if he has resigned voluntarily or otherwise. The respondent is entitled to pension which may be calculated and paid within a month.

The petition is dismissed in limini.

[ Bhawani Singh ]  
Chief Justice

Date : 30.11.2004 [ H.K.Rathod ]  
Judge

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