

BHARTIBEN CHANDRAKANTBHAI THAKOR

v.

STATE OF GUJARAT AND OTHERS

(Civil Appeal No 24 of 2013)

FEBRUARY 27, 2023

**[DR. DHANANJAYA Y CHANDRACHUD*, CJI,
PAMIDIGHANTAM SRI NARASIMHA AND
J. B. PARDIWALA, JJ.]**

Service law: Resignation – Pensionary dues – Appellant, Auxiliary Nurse Midwife submitted her resignation, however, withdrew it prior to its acceptance – Subsequently, she was called upon to resume her service but was not allowed to join – Much thereafter an order was passed accepting her resignation – High Court set aside the said order and directed that the appellant was entitled to all consequential benefits – However, the Division Bench modified the order of Single Judge to the extent that the appellant was held not to be entitled to any benefits for the period for which the resignation was in force – On appeal, held: Expression “for the period for which resignation was in force” could not be stretched to a date after the resignation had been withdrawn, before it came into force – It was not open to the State to continue passing successive order of this nature once the dispute over the period of resignation and the manner in which the resignation had to be treated had attained finality – Appellant not entitled to any consequential benefits only for the period between the date of submission her resignation to the date she withdrew her resignation – Appellant has completed 24 years 10 months and 5 days of pensionable service, thus, should be treated to have completed the minimum pensionable service of 25 years – Pensionary dues payable to the appellant to be computed on that basis regardless of any order passed by the State government.

CIVIL APPELLATE JURISDICTION : Civil Appeal No.24 of 2013.

From the Judgment and Order dated 17.02.2009 of the High Court of Gujarat at Ahmedabad in LPA No.70 of 2007 and SCA No.14636 of 2006.

Nachiketa Joshi, Ms. Himadri Haksar, Ajay Shukla, Advs. for the Appellant.

Ms. Swati Ghildiyal, Ms. Devyani Bhatt, Advs. for the Respondents.

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The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, CJI

1. The appellant was appointed as an Auxiliary Nurse Midwife by the District Panchayat, Valsad on 15 January 1980. She submitted her resignation from service on 18 April 1993, but on 23 November 1993, withdrew it. On 20 December 1993, she was called upon to resume service. She was however not permitted to join until 16 April 1994. On 23/26 December 1994, an order was passed accepting her resignation with effect from 31 March 1993. This gave rise to the institution of a petition¹ under Article 226 of the Constitution by the appellant.
2. By a judgment dated 12 October 2000, a Single Judge of the High Court of Gujarat set aside the order dated 23/26 December 1994 and directed that the appellant would be entitled to all consequential benefits.
3. In a Letters Patent Appeal² filed by the State of Gujarat, a Division Bench of the High Court found that the appellant had not been allowed to resume her duties for no fault of hers. However, the Division Bench directed that the appellant shall not be entitled to any benefits for the period for which the resignation was in force.
4. The above narration indicates that the issue pertaining to the resignation of the appellant attained finality with the judgment of the Division Bench dated 22 February 2001. Evidently, the appellant had withdrawn her resignation prior to its acceptance. The subsequent order of the Government accepting her resignation in December 1994 with effect from 31 March 1993 was of no consequence in law. The consequence of the decision of the High Court was that the resignation of the appellant from service which was withdrawn on 23 November 1993 would not have any legal effect. The only consequence of the judgment of the Division Bench was that whereas the Single Judge had directed that the appellant would be entitled to all consequential benefits, the Division Bench held that she would not be entitled to benefits for the period for which the resignation was in force. In other words, this period would be from 18 April 1993 until 23 November 1993.

1 Special Civil Appeal No 10418 of 1995

2 Letters Patent Appeal No 97 of 2001

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5. Despite the above legal position, an order was initially passed on 8 April 2002 by the respondent holding that (i) the period from 24 November 1993 to 30 March 2001 would be treated as unauthorized leave; and (ii) the above period would be considered as a break in service without salary. Subsequently on 17 July 2002, a similar order was passed treating the period of resignation as unauthorized leave.
6. The two orders dated 8 April 2002 and 17 July 2002 led to the institution of fresh proceedings³ under Article 226 of the Constitution. By a judgment dated 9 August 2004, a Single Judge of the High Court quashed and set aside both the above orders dated 8 April 2002 and 17 July 2002. The respondents were directed to pay all the benefits for the period from 24 November 1993 till 30 March 2001 together with interest at 9% from 22 February 2001. The amount was paid in 2004 and the interest element was paid in 2012. Significantly, the judgment of the High Court dated 9 August 2004 attained finality. There was no appeal against the decision.
7. On 16 July 2005, a third order was passed by the respondents holding the following period as unauthorized leave and to be treated as a break in service, namely;
 - (i) 21 June 1988 – 31 July 1988 - 41 days;
 - (ii) 18 April 1993 – 23 November 1993 - 220 days; and
 - (iii) 6 November 1991 – 7 April 1993 - 521 days
8. The above order gave rise to a third petition⁴ under Article 226 at the instance of the appellant. By its impugned judgment dated 25 July 2006, the High Court has held that no continuity of service could be granted on account of her absence from service over a period of 782 days, as noted above. The judgment of the Single Judge dated 25 July 2006 has been affirmed in appeal by the Division Bench on 17 February 2009. The matter has hence travelled to this Court.
9. We have heard Mr Nachiketa Joshi, counsel appearing on behalf of the appellant and Ms Swati Ghildiyal, counsel for the State of Gujarat.
10. The appellant had submitted her resignation on 18 April 1993, but withdrew it on 23 November 1993. The order accepting the resignation

3 Special Civil Application No 9723 of 2002

4 Special Civil Application No 14636 of 2006

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was passed much thereafter on 23/26 December 1994. This order was set aside by the High Court. While the Single Judge had directed the grant of all consequential benefits, the Division Bench in a Letters Patent Appeal modified the judgment to the extent that the appellant was held not to be entitled to any benefits for the period for which the resignation was in force. Hence, as a consequence of the judgment of the Division Bench in the Letters Patent Appeal, the appellant was not entitled to any consequential benefits between 18 April 1993 and 20 December 1993.

11. The expression “for the period for which resignation was in force” cannot be stretched to a date after the resignation had been withdrawn on 23 November 1993 before it came into force.
12. Despite the above position, two orders were passed thereafter on 8 April 2002 and 17 July 2002. Both the orders were set aside by the High Court on 9 August 2004 with a direction to the respondents to pay consequential benefits between November 1993 and March 2001 with interest.
13. Even after the appellant succeeded in the second writ petition, a further order was passed on 16 July 2005. Of the three periods which are referred to in the third order dated 16 July 2005, it is evident that the first period of 41 days is between June 1988 and July 1988 which is prior to the date of the resignation from service. The second period between April and November 1993 of 220 days is the period after the submission of the resignation and till its withdrawal which already formed the subject matter of the order passed by the Division Bench on 22 February 2001. The final period of 521 days however is between 6 November 1991 and 7 April 1993. This period has been set up in the order which was passed on 16 July 2005. Clearly, it was not open to the State to continue passing successive order of this nature once the dispute over the period of resignation and the manner in which the resignation had to be treated had attained finality. The appellant was not entitled to any consequential benefits only for the period between 18 April 1993 to 23 November 1993.
14. The appellant has been granted voluntary retirement from service on 30 November 2011. For the last 11 years, the appellant has been granted only provisional pension. The order by which the appellant has been permitted to retire voluntarily indicates that the appellant completed 24 years 10 months and 5 days of pensionable service out

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of a total service of 31 years 8 months and 15 days after deducting 6 years 10 months and 5 days.

15. For the reasons which we have indicated in the text of this judgment, we have come to the conclusion that the appellant should be treated to have completed the minimum pensionable service of 25 years. The pensionary dues payable to the appellant shall be computed on that basis regardless of any order which may have been passed by the State government. The pensionary payments to which the appellant is entitled on the basis that she has completed 25 years of pensionable service shall be computed within a period of two months from the date of this order. The arrears of pension payable to the appellant with effect from the date on which her voluntary retirement from service was accepted shall be paid over to the appellant within a period of one month thereafter together with interest at the rate of 6% per annum.
16. The appeal is allowed in the above terms and the impugned judgment of the High Court dated 17 February 2009 is set aside.
17. Pending applications, if any, stand disposed of.

Headnotes prepared by: Nidhi Jain
(Assisted by : Rakhi, LCRA)

Result of the case: Appeal allowed.