

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2236 OF 2020
(Arising out of SLP (Civil) No.5650 of 2019)

Rajasthan State Road Transport Corporation Ltd. & Ors. Appellant(s)

Versus

Smt. Mohani Devi & Anr. Respondent(s)

J U D G M E N T

A.S. Bopanna.J.

Leave granted.

2. The respondent herein was the Petitioner in S.B Civil Writ Petition No. 2839/2012 filed before the Rajasthan High Court. The brief facts that led to the filing of the Writ Petition is that respondent herein had claimed

the retiral benefits of her late husband who was

appointed in the post of conductor on 15.03.1979 at

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Alwar Depot of the Appellant Road Transport Corporation. The benefits were claimed on the basis that her husband be deemed to have voluntarily retired from service instead of having resigned.

3. In the course of service, respondent's husband had moved an application seeking voluntary retirement from service on 28.07.2005 indicating health reasons. No order was passed on the said application for voluntary retirement and the respondent's husband continued to remain in service.

4. Subsequently, the respondent's husband on 03.05.2006 submitted his resignation as he claimed to be under depression and his health condition had further deteriorated. The resignation was accepted by the authorities on 31.05.2006, he was relieved of his duties and the benefits were paid.

5. Thereafter, the respondent's husband is stated to have immediately submitted an application pointing out that he had erred in mentioning 'resignation' and he

desired to retire in view of his earlier application for voluntary retirement. The application also mentioned that no decision had been taken by authorities on his first application dated 28.07.2005 and therefore he should be treated as having voluntarily retired with consequent retiral benefits. The respondent after her husband's death approached the High Court with such prayer.

6. The learned Single Judge held that the respondent's husband had moved an application indicating deteriorating health and forcing such employee to work would be an act of oppression. Additionally, it was held that the voluntary retirement application was not decided within the period prescribed as per the Clause 19- D(2) of the Pension Scheme and reliance was placed on Clause 18-D(2) of RSRTC Standing Orders as per which an employee of the Corporation who had rendered pensionable service was entitled to seek voluntary retirement. It held that the respondent's husband would be deemed to have retired even though he had moved another application terming his retirement

as resignation in view of the law laid down in *Sheel Kumar Jain vs. The New India Assurance Co. Ltd.*

2012 (1) SLR 305. Thus, the appellants were directed to treat respondent's husband as having voluntarily retired and release the retiral benefits to which he was entitled.

7. Aggrieved, an appeal was filed by the appellants herein in D.B Special Appeal Writ No. 1261/2018. However, no infirmity was found by the Division Bench in the reasoning of the learned Single Judge and the learned Division Bench dismissed the appeal. The same has been assailed by the appellants herein in this appeal.

8. In the above background we have heard Dr. Ritu Bhardwaj, learned counsel for the appellants, Mr. S. Mahendran, learned counsel for the respondents and perused the appeal papers.

9. The short question that arises for consideration herein is as to whether the husband of the respondent had acquired an indefeasible right to seek for voluntary retirement from service and in that light whether the

High Court was justified in arriving at the conclusion that the subsequent resignation dated 03.05.2006 submitted by the husband of the respondent be considered as an application for voluntary retirement and treat the cessation of the jural relationship of employer/employee under the provision for Voluntary Retirement.

10. In order to consider the above aspect, a perusal of the factual matrix in the instant case would indicate that the respondent's husband had joined the service of the Appellant Transport Corporation at Alwar Depot on 15.03.1979. The application seeking voluntary retirement was submitted on 28.07.2005 by which period the respondent's husband no doubt had put in more than 25 years of service. Insofar as the eligibility to apply seeking voluntary retirement in view of the completed length of service, the respondent's husband had acquired such right. The Appellant Transport Corporation however, did not think it appropriate to accept the application and grant the voluntary retirement. In that circumstance the husband of the respondent submitted his resignation on

03.05.2006 which was accepted by the Appellant Transport Corporation and was relieved on 31.05.2006. The respondent contends that immediately thereafter an application was made indicating that the word 'resignation' was inadvertently mentioned and the intention of the respondent's husband was to renew his request for voluntary retirement. However, the consideration of such subsequent application by the Appellant Transport Corporation did not arise and as indicated, the respondent's husband had been relieved on 31.05.2006 and all the service benefits payable in respect of an employee who had resigned from service was paid, which was accepted by the respondent's husband. The undisputed position is also that the respondent's husband subsequently died on 14.04.2011. It is subsequent to the death of the husband, the respondent had filed the writ petition before the High Court of judicature for Rajasthan, Bench at Jaipur in S.B. Civil Writ Petition No.2839/2012. The learned Single Judge while considering the case of the respondent merely took

note of the legal position which had been enunciated by this Court in the facts of those cases which had been referred and with a bare reference to Clause 19D(2) of the Rules arrived at the conclusion that the application for voluntary retirement was deemed to have been accepted and therefore, directed that the appellants to treat the respondent's husband to have retired from service on the date he was relieved and pay the retiral benefits. The Division Bench has reiterated the said position.

11. Having heard the learned counsel for the parties, we find that the factual aspects which were relevant for decision making in the instant case has not been referred by the High Court during the course of its order but has merely assumed that the voluntary retirement application should be deemed to have been accepted when there was no rejection. As noticed from the objection statement filed by the respondent herein herself, the right to seek for voluntary retirement is stipulated in Rule 50 of Rajasthan Civil Services Pension Rules, 1996. As indicated above, since the same provides for 20 years of

qualifying service, the respondent's husband had qualified to apply. However, what is relevant to take note is that sub-Rule(2) thereof provides that the notice of voluntary retirement given by the employee shall require acceptance by the appointing authority. In the instant case, the undisputed position is that there was no acceptance and in that circumstance the husband of the respondent had submitted his resignation on 03.05.2006. Though the High Court has indicated deemed acceptance, the same would not be justified in the instant facts since the position which has not been taken note by the High Court is that as on the date when the husband of the respondent had made the application for voluntary retirement on 28.07.2005 the husband of the respondent had already been issued Charge-Sheets bearing No.7352 dated 16.12.2004 and bearing No.4118 dated 11.07.2005 alleging misconduct. Though the respondent, through the objection statement seeks to contend that the charge alleged against her husband was not justified, that aspect of the matter would not be

germane to the present consideration since the position of law is well established that pending disciplinary proceedings if an application for voluntary retirement is submitted there would be no absolute right seeking for acceptance since the employer if keen on proceeding with the inquiry would be entitled not to consider the application for voluntary retirement. Hence there would be no obligation to accept. In the instant facts the proceedings relating to the charge sheet was taken forward and completed through the final order dated 03.09.2005. The punishment of withholding of the increment was imposed. In such circumstance the non- consideration of the application for voluntary retirement would be justified.

12. Be that as it may, as noted the inquiry had been completed and thereafter when the respondent's husband submitted the resignation on 03.05.2006, the same was processed, accepted, he was relieved on 31.05.2006 and the payment of terminal benefits were made which had been accepted by him. During his lifetime up to

14.04.2011 the husband did not raise any issue with regard to the same. It is only thereafter the respondent has filed the writ petition before the High Court. Primarily it is to be noticed that when the application for voluntary retirement was filed on 28.07.2005 and had not been favourably considered by the employer, instead of submitting the resignation on 03.05.2006, if any legal right was available the appropriate course ought to have been to seek for acceptance of the application by initiating appropriate legal proceedings. Instead the respondent's husband had yielded to the position of non- acceptance of the application for voluntary retirement and has thereafter submitted his resignation. The acceptance of the resignation was acted upon by receiving the terminal benefits. If that be the position, when the writ petition was filed belatedly in the year 2012 and that too after the death of the employee who had not raised any grievance during his life time, consideration of the prayer made by the respondent was

not justified. The High Court has, therefore, committed an error in passing the concurrent orders.

13. The learned counsel for the respondent would submit that even if it is a case of resignation the deceased husband of the respondent was entitled to the payment of gratuity as he had put in the qualifying service. The learned counsel for the appellant would contend that the gratuity amount had been paid. In that regard, the reference made to para 9 of the writ appeal filed before the High Court would however indicate that though reference is made to the payment disbursed to the respondent's husband while accepting the resignation, the same does not disclose that the gratuity amount has been paid. Further, in the appeal filed before this Court the appellants have sought to justify the non-payment of the gratuity as the husband of the respondent had resigned from service. As rightly pointed out by the learned counsel for the respondents, Section 4(1)(b) of the Payment of Gratuity Act, 1972 provides that the gratuity shall be payable if the termination of employment is after

5 years of continuous service and such termination would include resignation as well. In that view, if the gratuity amount has not been paid to the respondent's husband, the liability to pay the same would subsist and the respondent No.1 will be entitled to receive the same in accordance with the provisions of the Act. In that regard it is directed that the appellants shall accordingly calculate the gratuity and pay the same to the respondent No.1, if already not paid. Such payment shall be made within four weeks from this date.

14. In the result, the appeal is allowed. The judgment dated 19.11.2018 passed in D.B. Special Appeal(W) No.1261/2018 upholding the order dated 01.11.2017 in S.B. Civil Writ Petition No.2839 of 2012 is set aside. The gratuity amount as directed above shall be paid to respondent No.1 in terms of the provisions of the Payment of Gratuity Act, 1972 within four weeks from this date.

15. Pending application, if any, shall stand disposed of.

.....**J.**
(R. BANUMATHI)

.....**J.**
(A.S. BOPANNA)

**New Delhi, April
15, 2020**