

Vinod Kanjibhai Bhagora

v.

State of Gujarat & Anr.

(Civil Appeal No. 1571 of 2024)

02 February 2024

[Vikram Nath and Satish Chandra Sharma, JJ.]

Issue for Consideration

Whether the Appellant's subsequent employment with the State Government could be construed to mean that the Appellant had been 'absorbed' by the State Government, such that the Appellants' prior service with the Central Government would be considered as a part of 'qualifying service' in terms of Rule 25(ix) of the Gujarat Civil Services (Pension) Rules, 2022.

Headnotes

Gujarat Civil Services (Pension) Rules, 2022 – r.25(ix) – Interpretation – Qualifying Service – Inclusion of the period of service rendered to the Central Government as a part of 'qualifying service' under the State Government's Pension Rules:

Held: Pension schemes floated by the State Government form a part of delegated beneficial legislation; and ought to be interpreted widely subject to such interpretation not running contrary to the express provisions of the Pension Rules – State Government is a model employer; and ought to uphold principles of fairness and clarity –The interpretation sought to be advanced is narrow and restrictive so as to limit the benefit of r.25(ix) only to such person(s) who may have explicitly been absorbed by the State Government as against persons such as the Appellant herein who had most certainly, implicitly been absorbed by the State Government i.e., the Appellants' participation in the selection process was prefaced by an NOC from the Central Government; and subsequently was followed by the tender of a technical resignation to the Central Government upon securing employment with the State Government – High Court erred in its interpretation of r.25(ix) and unfairly deprived the Appellant from seeking inclusion of the period of service rendered to the Central Government as a part of 'qualifying service' under the Pension Rules – Respondent No.1 to consider the service rendered by the Appellant to the Central Government in his capacity as Postal Assistant in the Gandhinagar Postal

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Division to be considered as qualifying service and re-calculate the terminal benefits/pensionary benefits – Impugned order set aside. [Paras 17-20, 22]

Service Law – Pension – Grant of – *raison d'etre* – Discussed.
[Para 10]

Case Law Cited

LIC v. Shree Lal Meena, [\[2019\] 5 SCR 391 : \(2019\) 4 SCC 479 – referred to.](#)

List of Acts

Gujarat Civil Services (Pension) Rules, 2022; Constitution of India.

List of Keywords

Pension; Subsequent employment; Absorbed; Prior service; Qualifying service; Technical resignation; Terminal benefits/ pensionary benefits.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.1571 of 2024

From the Judgment and Order dated 08.03.2018 of the High Court of Gujarat at Ahmedabad in SCA No.22341 of 2017

Appearances for Parties

Rishabh Parikh, E. C. Agrawala, Advs. for the Appellant.

Ms. Aishwarya Bhati, A.S.G., Ms. Swati Ghildiyal, Ms. Devyani Bhatt, Gurmeet Singh Makker, Ms. Ruchi Kohli, Ms. Archana Pathak Dave, Ms. Suhasini Sen, S S Rebello, Shyam Gopal, Raghav Sharma, Sugosh Subramanyam, Ms. Rekha Pandey, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

- Leave granted. The decision of the High Court of Gujarat (the “**High Court**”) in Special Civil Application No. 22341 of 2017 whereunder, the High Court declined to exercise its jurisdiction under Article 226 of the Constitution of India, is assailed before us (the “**Impugned Order**”).

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2. The Appellant was engaged by the Central Government as a Postal Assistant in the Gandhinagar Postal Division on 12.08.1983 and thereafter continued to serve in the aforesaid role up until 16.07.1993.
3. In the *interregnum*, an invitation for application(s) for recruitment to the post of Senior Assistant in the Ministry of Health and Medical Services, Government of Gujarat (the “**State Government**”) came to be issued. Accordingly, the Appellant herein obtained a No-Objection Certificate (“**NoC**”) dated 18.06.1993 from the Superintendent of Post Office, Gandhinagar Division and thereafter participated in the aforesaid selection process.
4. On 16.07.1993, the Appellant having been selected as Senior Assistant in the State Government, tendered a technical resignation in qua his employment as a Postal Assistant in the Gandhinagar Postal Division.
5. On 18.08.1993, the Appellant joined as a Senior Assistant in the State Government; and thereafter went on to serve the State Government for a period extending to 23 (twenty-three) years up until his superannuation (the “**Subject Period**”). Thereafter, the State Government only paid the Appellant terminal benefits/pensionary benefits to the extent of the Subject Period (the “**Impugned Action**”).
6. Aggrieved by Impugned Action of the State Government, the Appellant made a representation before the Chief Postmaster General, Gujarat Circle seeking the inclusion of the period of his service with the Central Government i.e., as a Postal Assistant in the Gandhinagar Postal Division between ‘1983 and ‘1993 to be considered in the grant of terminal benefits / pensionary benefits as per Rule 25 of the Gujarat Civil Services (Pension) Rules, 2022 (the “**Pension Rules**”). However, *vide* an order dated 30.06.2014, the aforesaid representation came to be rejected on the sole ground that the Appellant had tendered an unconditional resignation.
7. In the aforesaid circumstances, the Appellant was constrained to prefer a writ petition before the High Court. *Vide* the Impugned Order, the High Court dismissed the aforesaid writ petition and observed *inter alia* that the Appellants’ case would not attract the benefit envisaged under Rule 25 of the Pension Rules. The operative paragraph(s) of the decision of the High Court are reproduced hereunder:

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"6. The petitioner has claimed the pensionary benefits from the State Government for the period he worked as Central Government for the year 1983 to 1993. Reliance is placed upon Rule 25 of the above Rules. However, considering Rule 25 of the above Rules, we are of the opinion that the same shall not be applicable to the facts and circumstances of the case on the hand. Rule 25 of the said Rules is with respect to the qualifying service. The employee who has rendered his service with the Central Government is thereafter absorbed in the State Government. Thereafter, it was found that he has not completed the qualifying service while working with the State Government. In that case for the purpose of qualifying service, the service rendered by him as a Central Government employee is required to be counted and that too for the purpose of qualifying service.

7. Therefore, in the facts and circumstances of the case, Rule 25 of the above Rules would not be applicable.

8. Under the circumstances, as observed hereinabove, the petitioner has been paid the pension/pensionary/terminal benefits of the State Government where he last worked, considering the service rendered by him with the State Government."

8. Mr. Rishabh Parikh, Ld. Counsel appearing on behalf of the Appellant has drawn the attention of the Court to Rule 25(ix) of the Pension Rules. In the aforesaid context, he has submitted that the Appellant has served as Postal Assistant in the Gandhinagar Postal Division between '1983 and '1993 i.e., service under the Central Government having a pension scheme, and thereafter served the State Government for the Subject Period. Accordingly, it was his principal contention that the Appellant was absorbed by the State Government and consequently, in terms of Rule 25(ix) of the Pension Rules, the Appellants' terminal benefits / pensionary benefits could not be limited to merely the Subject Period but must also include 10 (ten) years of service rendered by him to the Central Government.
9. On the other hand, Ms. Swati Ghildiyal, AOR appearing on behalf of Respondent No. 1 i.e., the State of Gujarat has vehemently opposed the aforesaid submission(s). The main thrust of her argument(s) before this Court is that that the Appellant was not entitled to seek

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the benefit of Rule 25(ix) of the Pension Rules on account of the Appellants' appointment in the State Government emanating from a fresh recruitment i.e., pursuant to an invitation for application(s) to the post of Senior Assistant in the Ministry of Health and Medical Services issued by the State Government.

10. As a precursor, it would be relevant to consider the *raison d'être* qua the grant of pension. Similarly, it would be equally important to clarify that pension is earned by a government servant in *lieu* of tireless service rendered by him / her (as the case may be) during the course of their employment; and often is an important consideration for person(s) seeking government employment. Accordingly, in our considered opinion, the *raison d'être* qua the grant of pension by the State Government would inextricably be linked to a concentrated effort by the State Government to enable its former employee(s) to tide over the vagaries and vicissitudes associated with old age *vide* a pension scheme.
11. In this context, we must now examine Rule 25(ix) of the Pension Rules. For ease of reference the same is reproduced as under:

"Rule 25. Qualifying Service : Subject to the provisions of these rules, qualifying service of a Government employee, means and includes -

xxx xxx xxx

(ix) services rendered under Central Government/ Central Government Autonomous bodies having pension scheme, by a Government employee who is absorbed in Government"

12. The fulcrum of the dispute before this Court pertains to whether the Appellants' subsequent employment with the State Government could be construed to mean that the Appellant had been 'absorbed' by the State Government, such that the Appellants' prior service with the Central Government would be considered as a part of 'qualifying service' in terms of Rule 25(ix) of the Pension Rules.
13. Admittedly, the Appellant served the Central Government as a Postal Assistant in the Gandhinagar Postal Division between '1983 – '1993 i.e., for a period spanning close to a decade. Subsequently, pursuant to an invitation of application(s) for recruitment to the post

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of Senior Assistant in the Ministry of Health and Medical Services, Government of Gujarat, the Appellant *herein* after obtaining an NOC from the Central Government, applied for and subsequently came to be appointed to the aforesaid post. Thereafter, the Appellant volunteered a technical resignation in order to be able to serve the State Government.

14. On a perusal of Rule 25(ix) of the Pension Rules we note that, qualifying service for the purpose of calculating terminal benefits / pensionary benefits under the Pension Rules would include prior services rendered by such a person under *inter alia* the Central Government provided that (i) the employment of such person under the Central Government encompassed an underlying pension scheme; and (ii) such person came to be absorbed by the State Government.
15. In the present case, it is an admitted and undisputed fact that the prior employment of the Appellant under the Central Government contemplated an underlying pension and thus, the dispute before us is only limited to whether the Appellant came to be 'absorbed' by the State Government.
16. Respondent No. 1's stance is premised on the fact that the Appellant joined the services of the State Government pursuant to a fresh recruitment i.e., pursuant to an invitation for applications issued by the State Government; and, merely because the Appellant was a Central Government employee in his previous avatar, he could not be considered to have been absorbed by the State Government.
17. It is well settled that pension scheme(s) floated by the State Government form a part of delegated beneficial legislation; and ought to be interpreted widely subject to such interpretation not running contrary to the express provisions of the Pension Rules¹. Furthermore, it would be relevant to underscore that the State Government is a model employer; and ought to uphold principles of fairness and clarity.
18. In the aforesaid context, we have carefully considered the Pension Rules, and we find that the interpretation sought to be advanced by Ms. Ghildiyal is narrow and restrictive so as to limit the benefit of Rule 25(ix) of the Pension Rules only to such person(s) who may have explicitly been absorbed by the State Government as against persons

¹ [Senior Divisional Manager, LIC v. Shree Lal Meena](#), [2019] 5 SCR 391 : (2019) 4 SCC 479

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such as the Appellant herein who has most certainly, implicitly been absorbed by the State Government i.e., the Appellants' participation in the selection process was prefaced by an NOC from the Central Government; and subsequently was followed by the tender of a technical resignation to the Central Government upon securing employment with the State Government. Pertinently, neither can the aforementioned interpretation sought to be advance on behalf of Respondent No. 1 be said to be echoed by any express provision of the Pension Rules nor has any convincing rationale to adopt such an interpretation, been placed before us.

19. We thus find that the High Court erred in its interpretation of Rule 25(ix) of the Pension Rules; and consequently, unfairly deprived the Appellant from seeking inclusion of the period of service rendered to the Central Government as a part of 'qualifying service' under the Pension Rules.
20. Accordingly, we direct Respondent No. 1 to consider the service rendered by the Appellant to the Central Government in his capacity as Postal Assistant in the Gandhinagar Postal Division to be considered as qualifying service; and thereafter (i) re-calculate the terminal benefits / pensionary benefits accruing in favour of the Appellant; and (ii) transmit the arrears (if any) of such terminal benefits / pensionary benefits to the Appellant within 6 (six) weeks from today i.e., 02.02.2024.
21. Upon making the aforementioned payment, Respondent No. 1 shall be free to seek *pro-rata* re-imbursement / contribution from Respondent No. 2 in respect of terminal benefits / pensionary benefits paid by Respondent No. 1 for the period pertaining to service rendered by the Appellant for the Central Government.
22. The Impugned Order is set aside; and the appeal stands allowed in the aforesaid terms. Pending application(s), if any, stand disposed of. No order as to costs.