

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 507 OF 2016

Mrs. Nagarathna Ganesh

...Petitioner

V/s.

Konkan Railway Corporation
Ltd. And Ors.

....Respondents

* * * * *

Mr. Ramesh Ramamurthy I/by. Mr. Saikumar Ramamurthy,
Advocate for the petitioner.

Ms. Kavita Anchan a/w. Mr. Arsh Misra I/by. M.V. Kini &
Co., Advocate for respondents no.1 to 3.

Coram : A.S. Oka, &

Sandeep K. Shinde, JJ.

Monday, 3rd December, 2018.

P.C. :

1. Heard learned Counsel for the petitioner.
2. The petitioner who was in the employment of the first respondent addressed a letter dated 4th June, 2002 to the Managing Director of the first respondent, stating that, she may be granted voluntary retirement due to her health problems. In the last paragraph of the said letter, the

petitioner had mentioned that if her request for grant of voluntary retirement is not accepted, her letter shall be treated as her resignation from service. On 8th June, 2012, the petitioner's resignation was accepted by the first respondent and the acceptance was communicated to her. In this petition filed on 18th December, 2015 (three and half years after her resignation was accepted), a contention is sought to be raised that when she submitted the letter which was treated as a resignation, she was suffering from depression and she never intended to resign but she intended to apply for voluntary retirement.

3. The learned Counsel appearing for the petitioner has invited our attention to several documents including the note prepared by the Management of the first respondent. He submitted that the fact that the petitioner was under treatment of a psychiatrist is noted in the note prepared for dealing with the letter dated 4th June, 2012 submitted by the petitioner. His submission is that, apart from the fact that the letter dated 4th June, 2012 was written when the petitioner was suffering from depression, the fact that she never intended to tender her resignation, is clear from the

correspondence made by her for demanding pension. He submitted that consequent to acceptance of the resignation, the petitioner was not entitled to pension and the fact that after acceptance of her resignation, she has repeatedly addressed letters demanding pension shows that she never intended to tender resignation. He submitted that, even the service Regulations will have to be looked into.

3. We have considered the submissions. We have perused the letter dated 4th June, 2012. In the fifth paragraph of the said letter, for the reasons assigned in earlier paragraphs, the petitioner prayed for grant of voluntary retirement. In the last paragraph, the petitioner mentioned thus :

“ As my health is deteriorating day by day I am not in a position to continue in service. Hence it is requested that in case my above request for VRS is not accepted by the management, this letter may be treated as my resignation from service and I may be relieved immediately from KRCL service waiving notice period.”

(emphasis supplied)

4. We have considered the submissions. If the

submission of the petitioner is accepted, it will mean that first five paragraphs of the letter in which she had prayed for voluntary retirement will have to be treated as correctly written by the petitioner though she was under depression and only the last paragraph which has been quoted above, will have to be ignored. This cannot be done.

5. There is no dispute that the resignation of the petitioner was accepted on 8th June, 2012 and the office order was communicated to the petitioner. In the first letter addressed by the petitioner thereafter on 22nd August, 2012 (Exhibit-4 to the petition), the petitioner has not made any grievance whatsoever about non-acceptance of the prayer for grant of voluntary retirement and the acceptance of resignation. The only request made therein is for grant of pension. The letter dated 24th September, 2012 (Exhibit-H) is in the nature of a reminder and does not contain any grievance about the refusal to accept prayer for voluntary retirement. Similar reminders were issued by the petitioner on 26th October, 2012, 20th November, 2012 and 6th December, 2012. On 14th January, 2013, the petitioner addressed another letter to the Chief Personnel Officer of

the first respondent in which she has stated thus :

“My letters mentioned above regarding payment of pension to me may kindly be referred. It is more than 7 months since my resignation has been accepted by the competent authority. In this period, I have written 6 letters to the administration requesting to release my pension payment. But so far neither any payment (pension) has been started nor has any response to my above letters been given by the administration. Sir, I have served the organization for more than 21 years with utmost dedication. As mentioned in the KRCL letter itself dated 18/07/2012, I had taken retirement due to my health reasons after serving for more than 21 years. My pension payment may kindly be released immediately with arrears.” (emphasis supplied)

6. Thus, in all the above letters, the petitioner has reiterated that, her resignation has been accepted by the

Competent Authority. There is absolutely no protest made by the petitioner in various letters which were written six months after her resignation was accepted. On 19th February, 2013 Assistant Personnel Officer of the first respondent communicated to the petitioner that as her resignation was accepted by the Competent Authority by waiving the notice period, the petitioner was ineligible for grant of pension in terms of para-311 of the Manual of Pension Rules, 1956 which lays down that no pensionary benefits (compassionate grant and/or allowances) may be granted to Railway servants who resign from service.

7. The response to the said letter by the petitioner was nearly after three months. On 5th May, 2013 she addressed a letter to the Railway Board. Perusal of the said letter shows that, there is absolutely no grievance made by the petitioner about the refusal of the respondents to accept her request for voluntary retirement. The grievance made in the said letter is about non-grant of pension. In the letter dated 15th September, 2013 addressed by her to the Hon'ble Minister of Railways, the petitioner has noted that her prayer for voluntary retirement was rejected and her

resignation was accepted. She has not stated in the said letter that she never intended to resign.

8. On 6th March, 2014, the Chief Personnel Officer of the first respondent addressed a letter to the petitioner. The said letter records that an effort was made by the Management by nominating a Women Officer named therein, who was the Deputy Chief Personnel Officer to counsel the petitioner. It is stated that the said Deputy Chief Personnel Officer tried her level best to persuade the petitioner not to resign but she insisted on the acceptance of resignation. The same stand is specifically taken in another letter dated 12th August, 2014 addressed by the respondent to the petitioner. The petitioner did not reply to the said letters and did not dispute that an attempt was made by the respondent to counsel her. Instead of dealing with the said two letters, the petitioner addressed a letter dated 24th October, 2014 to the Hon'ble Prime Minister of India. Another letter was addressed by her on 20th February, 2015 to the Hon'ble Minister of Railways. There is a further letter addressed by her to Hon'ble Prime Minister of India. A representation made to the Hon'ble Prime Minister of India

was answered by a letter dated 8th June, 2015 which reiterates the efforts made by the Management to persuade the petitioner not to insist upon accepting the resignation. A representation dated 15th September, 2013 addressed by the petitioner to Hon'ble Prime Minister of India was answered by a letter dated 8th June, 2015 of the respondents by reiterating what is stated earlier about the efforts made to persuade the petitioner not to tender resignation.

9. As stated above, the present petition was filed about five months thereafter i.e. on 18th December, 2015.

10. Thus, it appears to us that the case made out by the petitioner that she never intended to tender a resignation is clearly an afterthought. Her letter of resignation dated 4th June, 2012 contained a specific prayer that in the event, her application for voluntary retirement was not accepted, her resignation may be accepted. After the acceptance of her resignation was communicated to the petitioner, as set out earlier, the petitioner had never made any protest about it. Hence, no case is made out for interference in writ jurisdiction under Article 226 of the Constitution of India.

11. At this stage, learned Counsel for the petitioner submits that the petitioner is entitled to compassionate allowance. We are not adjudicating upon the said entitlement. However, it will be open for the petitioner to make a representation in that behalf to the appropriate authority of the first respondent which shall be decided in accordance with law.

(SANDEEP K. SHINDE, J)

(A.S. OKA, J)