

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P(C) No.7387/2007**

% **Date of decision: 12.03.2008**

Har Swaroop Petitioner
Through: Mr.B.K. Sinha, Advocate.

Versus

The Management of Punjab & Sind Bank Respondent
Through: Mr.Rajat Arora and Mr.M.K. Datta,
Advocates.

CORAM :-

HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

1. The petitioner has impugned the award dated 17th May, 2007 holding that the action of the respondent, Punjab & Sind Bank, to treat the petitioner to have voluntarily retired from service under Clause 17(a) of Bipartite Settlement is legal and justified and the petitioner is not entitled for any relief as prayed by him.

2. The Ministry of Labor by its letter No.L-12012/11/2004 (IR(B-II) Central Government dated 23th June, 2004 had made the following reference:

“Whether the action of the management of Punjab & Sind Bank to treat the workman Shri Harswaroop to have voluntarily retired from service under Clause 17(a) of the Bipartite Settlement is legal and justified? If not, what relief is the concerned disputant entitled to.”

3. The petitioner contended that he was a Peon working with the respondent Bank from 18th April, 1975. It was asserted that on 24th February, 1996, he fell sick and was given medical treatment in government hospital and thereafter he was treated at government hospital at NOIDA and after a long treatment he was declared fit on 22nd February, 2002. He contended that all the necessary applicants/information together with medical certificates were sent to the Bank from time to time, however, when petitioner got the medical fitness certificate and he approached the Chief Manager on 22nd February, 2002 to resume his duties, he was not allowed to join.

4. The petitioner asserted that the provision of voluntary cessation of employment as provided under clause 17 of 5th Bipartite Settlement dated 10th August, 1989 has been altogether deleted by clause No.33 of 7th Bipartite Settlement with effect from 1st November, 1997 and there

was no provision of voluntary cessation of employment in banking industry after 1st November, 1997.

5. The grievance of the petitioner is that he was not issued any letter/notice as required under clause 17(a) of Bipartite Settlement and the respondent failed to conduct an inquiry and take action against him in case the absence of the petitioner tantamount to a misconduct on his part.

6. The claim of the petitioner was contested on the ground that the petitioner remained absent without permission/leave/intimation from 24th February, 1996. According to the respondent, a medical certificate dated 5th June, 1996 was given stipulating that he is suffering from some disease from 1st March, 1996 to 2nd June, 1996 and he is advised rest. The petitioner did not approached for duty on 3rd June, 1996 nor applied for any leave or informed the Bank about his sickness and did not join the duties despite various letter on 30th December, 1998 to 26th April, 1996, 6th July, 1996 and 21st August, 1996. The petitioner was though advised to appear before the Bank's medical official, however, he did not do so. The petitioner was given a notice on 17th October, 1996 to which the petitioner did not reply and by letter dated 13th January,

1998, the petitioner was intimated that he has ceased to be in the service of the respondent Bank.

7. The respondent Bank contended that the 7th Bipartite Settlement was arrived at 27th March, 2000, however, deletion of the same will not make any difference because the workman/petitioner was not interested in joining his duties and had remained un-authorizedly absent for a long period about eight years.

8. The Labour Court has considered the pleas and evidence of the parties and has held that the workman/petitioner failed to file any medical certificate from 3rd June, 1996 to 5th July, 2000. Considering the previous record of the petitioner, it also became apparent that he is a habitual absentee and he was absent for 893 days during the period 1991 to 1995. Though two prescriptions were submitted by the petitioner, which were dated 4th October, 2000 and 3rd June, 1996, however, these prescriptions did not reflect that the petitioner was unable to join duties or he was advised rest.

9. The Labour Court considered the cross-examination of the petitioner admitting that he did not know the name of his disease and

that he was not hospitalized even for a day during the alleged treatment from 1996 to 2000. On the basis of the evidence produced before the Labor Court, it was held that the documents specially the prescriptions produced by the petitioner seems to be forged and cooked and the petitioner failed to produce the original medical certificates despite opportunities granted to him. It was observed by the Court that the photocopies of the medical certificates had been obtained by the petitioner in 2002 after manipulation.

10. The findings and inferences of the Labor Court are based on evidence and documents on record and there does not appear to be any manifest errors in it. This court in exercise of its jurisdiction under Article 226 of Constitution of India is not to substitute its own inferences with the inferences drawn by the Labor Court. In *(2006) 2 SCC 373* , at page 378 *Govt. of A.P. v. Mohd. Nasrullah Khan the Supreme court had held:*

11. By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority.

11. Thus it is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court should not interfere with factual findings of the lower courts and should restrain itself from re-appreciating evidence while exercising powers of judicial review. Therefore, writ court should refrain from interfering with the orders of an inferior tribunal or subordinate court unless it suffers from an error of jurisdiction or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. The objective of judicial review is that a person receives a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.

12 Learned counsel for the petitioner contends that there was no reference for a period prior to 1995 and consequently the finding of the Labor Court that the petitioner was unauthorisedly absent for 893 days from 1991 to 1995 could not have been arrived at. Perusal of the pleas and evidence, it is apparent that though the absence of the petitioner from 1991 to 1995 was not the fact in issue but the said fact that for the period even prior to 1996 up to 2002, the petitioner remained

absent even during 1991 to 1995 for 893 days will be a relevant factor which could be taken into consideration before deciding whether the petitioner is entitled for any of the relief sought by him.

13. Learned counsel for the petitioner has pointed out the letter dated 17th October, 1996 of the respondent which was addressed to the petitioner stipulating that since the petitioner has not sent any document regarding his treatment in a government hospital he was asked to get himself medically examined from a doctor of the Bank and the petitioner was asked to join the duties of the Bank within 30 days failing which it will be deemed that the petitioner has been voluntarily ceased to be in employment of the Bank. Learned counsel for the petitioner's contention is that notice dated 13th January, 1998 was sent almost after 1½ years and on that date the clause 17 (a) of bipartite Settlement had already been cancelled, therefore, it cannot be said that the petitioner had voluntarily ceased to be in the services of the Bank. Reading the communication dated 17th October, 1996 and 13th January, 1998, it is apparent that on expiry of 30 days from the receipt of the communication dated 17th October, 1996, the petitioner voluntarily ceased to be in the service of the Bank. By letter dated 13th November, 1998, it was reiterated by the respondent Bank that on account of continuous absence of the petitioner, he has voluntarily ceased to be in the services of the respondent Bank especially because

the petitioner did not join the duties even after 30 days of receipt of the notice dated 17th October, 1996. Perusal of the memorandum of settlement dated 27th March, 2000, it becomes apparent that clause 17 of the 5th Bipartite Settlement dated 10th April, 1989 was deleted on 27th March, 2000. Therefore, the plea of the petitioner that the petitioner could not be voluntarily ceased to be in the service of the respondent Bank is not correct and is not made out in the facts and circumstances.

14. The learned counsel for the respondent has also relied on 2001 LAB. I.C. 301 (Supreme Court), Punjab & Sind Bank and others v. Sakattar Singh holding that in terms of Bipartite Settlement clause 17 it is clear that even in case of an employee absenting himself from duty for 90 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended after giving the notice by the management calling upon the delinquent employee to report for duty within 30 days and in case the employee fails to join duties, he will be deemed to have voluntarily ceased from the services on the expiry of the time fixed in the said notice. The observation of the Supreme Court in Punjab & Sind Bank (*supra*) is as under:

“4. A reading of clause XVI of IV Bipartite Settlement will make it clear that in the even an employee absents himself from duty for 90 or more consecutive days beyond the period of leave originally sanctioned or subsequently

extended the Management may, at any time thereafter, give a notice to the employee at the last known address calling upon him to report for duty within 30 days of notice stating, inter alia, the grounds for the Management coming to the conclusion that the employee has no intention of joining duty and furnishing necessary evidence wherever relevant and unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence satisfying the Management that he has not taken up another employment or avocation and he has no intention of not joining the duty, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the time fixed in the said notice. In the event of the employee giving a satisfactory reply, he will be permitted to report for duty thereafter within 30 days from the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service. Under this Rule the employee is given an opportunity to rejoin duty with a stipulated time or explain his position to the satisfaction of the Management that he has no intention of not joining duty, and a presumption will be drawn that the employee does not required the job any more and will stand retired from service. Thus, there is no punishment for misconduct but only to notice the realities of the situation resulting from long absence of an employee from work with no satisfactory explanation thereto. The principles of natural justice cannot be examined in vacuum without reference to the fact-situation arising in the case. This Rule has been incorporated in an agreement where representatives of employees' unions were party. They also realised the facility of continuing a situation when an employee without appropriate intimation to the management is playing truant."

15. Consequently, it can be held that after 30 days of the notice dated 17th October, 1996 when petitioner failed to report for duty, he was deemed to have voluntarily ceased to be in the service of the Bank in accordance with clause 17(a) of Bipartite Settlement. If the petitioner voluntarily ceased to be in the employment of the respondent Bank in

terms of the Bipartite Settlement, the plea of the petitioner that there should have been an inquiry against him and only after taking action in accordance with the report of the enquiry, he could be released from his work, cannot be inferred nor it is made out in the facts and circumstances.

16. The findings of the Labour Court do not suffer from any perversity or such manifest error which require correction in exercise of jurisdiction under Article 226 of the Constitution of India. In the circumstances, there is no infirmity or patent error or perversity in the findings of Central Government Industrial Tribunal cum Labour Court-II so as to entail inference by this Court under Article 226 of the Constitution of India.

The writ petition is, therefore, without any merit and it is therefore, dismissed.

March 12th, 2008
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ANIL KUMAR, J.