

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

Date of decision: 1st July, 2010.

+ W.P.(C) No.268/2003

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SYNDICATE BANK

..... Petitioner

Through: Mr. S.K. Taneja, Sr. Advocate with Mr.
Puneet Taneja, Advocate

Versus

SH. B.N. PANDEY & ANR.

..... Respondents

Through: Mr. Vikas Mahajan & Mr. A.N. Singh,
Advocates

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The petitioner Bank in this writ petition impugns the award dated 8th August, 2002 of the Industrial Tribunal holding the action of the petitioner Bank of treating the respondent no.2 workman to have voluntarily retired from the services of the petitioner Bank with effect from 30th April, 1993 to be unjust, illegal and unfair and quashing the same and further holding the respondent workman to be entitled to continuity of service in the petitioner Bank with full back wages and all consequential benefits. This Court vide *ex*

parte order dated 10th January, 2003, while issuing notice of the petition stayed the operation of the award subject to the petitioner Bank depositing 50% of the back wages in this Court and which amount was directed to be kept in a fixed deposit. Pursuant to the said direction a sum of Rs.6,66,123.07p was deposited in this Court. The respondent workman applied for release of the said amount. This Court vide order dated 3rd April, 2003 permitted the release of a sum of Rs.66,000/- only to the respondent workman without furnishing any security. Subsequently, vide order dated 2nd September, 2004 the balance amount was also directed to be released in favour of the respondent workman subject to his furnishing the security. Though a security bond was filed by the respondent workman and to which objections were preferred by the petitioner Bank, but the respondent workman failed to take steps thereafter and as such the balance amount remains deposited in this Court. The respondent workman also applied under Section 17B of the I.D. Act and which application was allowed vide order dated 30th March, 2006. The respondent workman filed an affidavit undertaking to this Court, to in the event of this writ petition succeeding, refund to the petitioner Bank the excess amount received over and above the last drawn wages. The counsels for the parties have been heard.

2. The action aforesaid against the respondent workman was taken by the petitioner Bank in accordance with a clause in the Bipartite Agreement

between the Indian Banks' Association and the Bank employees and which Clause is as under:

“When an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or its extension or without any leave to his credit or beyond the period of leave sanctioned originally / subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating *inter alia* the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or gives any explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the Bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the Bank's right to take any action under the law or rules of service.”

3. The Supreme Court in ***D.K. Yadav Vs. J.M.A. Industries Ltd.*** (1993) 3 SCC 259 has held that even where the Standing Orders of the employer

provide for dismissal from service for unexplained absence, the same has to be read with the principles of natural justice and without conducting domestic inquiry and without giving an opportunity of being heard, termination of service on the said ground cannot be effected. Recently in ***Vice Chancellor, Banaras Hindu University Vs. Shrikant*** AIR 2006 SC 2304, it was held that although laying down a provision providing for deemed abandonment from service may be permissible in law, an action taken thereunder must be fair and reasonable so as to satisfy the requirements of Article 14 of the Constitution; if the action is found to be illogical in nature, the same cannot be sustained.

4. However, in ***Punjab & Sind Bank Vs. Sakattar Singh*** MANU/SC/0733/2000, it was held that no inquiry may be conducted where the Standing Orders of the Bank provide a procedure for treating such absentee employee to have deemed to have voluntarily retired after a particular period of unauthorized absence. To the same effect is the recent dicta ***The Regional Manager, Central Bank of India Vs. Vijay Krishna Neema*** AIR 2009 SC 2200. Thus what follows from the aforesaid judgments is that such a Clause, as aforesaid, in the Bipartite Agreement between the Bank and its employees is valid.

5. The chronology of events in the present case may be noticed.

6. It is not disputed that the respondent workman absented himself unauthorizedly and without any permission with effect from 29th October, 1992. The petitioner Bank filed before the Industrial Tribunal a copy of its letter dated 4th November, 1992 to the respondent workman, complaining of his unauthorized absence and calling upon him to rejoin duty within 3 days; the respondent workman admitted the said letter. It is also not disputed that the respondent workman after 29th October, 1992 surfaced first at the place of his posting on 25th January, 1993. While it is the case of the petitioner Bank that the respondent workman on 25th January, 1993 was entrusted with the work relating to preparation of office notes, sanction letters etc. but the respondent workman left at about 12:50 hours without permission and without noting down his movement in the movement register and without doing the work allotted to him; it is the case of the respondent workman that he was not assigned any work but still remained in the Bank for the entire day. The petitioner Bank in this regard, filed before the Industrial Tribunal office copy of letter dated 25th January, 1993 to the respondent workman recording its version and intimating the respondent workman that owing to his conduct as aforesaid, he was not deemed to be present on 25th January, 1993; the respondent workman admitted the said letter. It is also not disputed that the respondent workman after 25th January, 1993 neither returned for duty nor wrote any letter to the petitioner Bank to the effect that he was on 25th January, 1993 not given any work or had remained in the Bank the whole day; he also did not reply to the letter dated 25th January,

1993 of the petitioner Bank. Thereafter the petitioner Bank vide its letter dated 3rd March, 1993 to the respondent workman and the receipt / service whereof is also not controverted, invoked the Clause aforesaid in the Bipartite Agreement and informed the respondent workman that if he failed to report for duty within 30 days i.e. on or before 2nd April, 1993 or fails to give satisfactory explanation for his absence within 30 days, he will be deemed to have voluntarily retired from the Bank's service. A reply dated 15th March, 1993 was given by the respondent workman to the said letter of the petitioner Bank in which he, for the first time, stated that he was not given work on 25th January, 1993 and also controverted that he had left at 12:50 p.m. and contended that he was being wrongly treated as on leave on 25th January, 1993. The respondent workman in the said reply also made other grievances of his not being given temporary special allowances, there being no suitable atmosphere at the place of his posting, the behaviour meted out to him being insulting and his loan application being not processed; the respondent workman by the said letter intimated to the petitioner Bank that he would not report for work to the place where posted unless he was given posting to the branch of his choice. The petitioner Bank vide letter dated 24th March, 1993 informed the respondent workman that his explanation was not found satisfactory and asking him to report for duty on or before 2nd April, 1993 in terms of the letter dated 3rd March, 1993 (supra). It is not disputed that the respondent workman did not so report for duty. The petitioner Bank, in the circumstances, vide letter dated 17th April, 1993

informed the respondent workman that in accordance with the clause aforesaid in the Bipartite Agreement, he was deemed to have voluntarily retired from the Bank's service with effect from 2nd April, 1993.

7. The dispute was raised by the respondent workman after four years therefrom in or about the year 1996 and the reference was made on 30th April, 1997. It appears that before the Conciliation Officer the petitioner Bank gave an offer of settlement to the effect that it would take back the respondent workman provided he gives up his claim for wages during the period of his absence. The said settlement proposal of the petitioner Bank was rejected by the respondent workman.

8. The Industrial Tribunal has vide award impugned in this petition held:

- (i) That the settlement proposal aforesaid given by the petitioner Bank before the Conciliation Officer amounted to its admission of illegality of the order treating the respondent workman to have voluntarily retired.
- (ii) That the Clause aforesaid of the Bipartite Agreement was not attracted because it could be invoked in case of absenteeism of 90 days; in the present case the respondent workman had admittedly returned for duty on the 90th day i.e. on 25th January, 1993.

- (iii) That in the notice dated 3rd March, 1993 (*supra*) issued to the respondent workman, no grounds were stated for coming to the conclusion that the respondent workman had no intention of joining duties or that he had taken up employment anywhere else. The said notice was thus not in accordance with the requirements of the Clause aforesaid.
- (iv) That no reasons were given for not accepting the explanation furnished by the respondent workman in the letter dated 15th March, 1993.
- (v) That from the language of the letter dated 24th March, 1993 (*supra*), it appears that the Bank authorities were annoyed with the respondent workman because of his repeatedly asking for his transfer.
- (vi) It was also the case of the petitioner Bank that the respondent workman had during his absence visited abroad without taking any permission and that he had also contested the Municipal election without taking any permission from the petitioner Bank. The Industrial Tribunal held that the factum of the respondent workman having visited abroad was not proved and no permission was required by the respondent workman for

contesting the elections – the elections were contested in the year 1997 i.e. after four years of the order of termination.

The Industrial Tribunal accordingly made the award as aforesaid.

9. The senior counsel for the petitioner Bank has contended that the respondent workman has become a political leader and has been contesting elections and is now no longer interested in employment in the petitioner Bank. It is further contended that the Clause aforesaid in the Bi-partite Agreement has been agreed to voluntarily by the employees of the Bank and the respondent workman is bound by the same and cannot be permitted to make a mockery of the same. It is further contended that the said Clause cannot be interpreted in a pedantic manner; an employee cannot defeat the said Clause by reporting for duty on the 90th day or just before the expiry of 90 days and thereafter remain absent again and contend that 90 days of unauthorized absence has not been completed. He has further urged that the respondent workman could not insist on being transferred and had been given sufficient opportunity to report for duty and which he had failed to avail. Reliance is placed on:

- (i) ***Regional Manager, Bank of Baroda Vs. Anita Nandrajog***
2009 LLR 1135 laying down that the behaviour of an employee of remaining absent without leave for long periods is regrettable and unfortunate; no establishment can function if it allows its

employees to behave in such a manner. The order of the Bank of treating such an employee to have voluntarily retired was upheld.

- (ii) *Viveka Nand Sethi Vs. Chairman, J&K Bank Ltd.* (2005) 5 SCC 337 laying down that the Clause aforesaid of the Bi-partite Agreement between the Bank and its employees is a complete code by itself – It lays down a complete machinery as to how and in what manner the employer can arrive at a satisfaction that the workman has no intention to join his duties – it raises a legal fiction which is of wide import and once the action on the part of the employer is found to be fair the onus is on the workman to prove to the contrary. It was further held that the Clause is clear and unambiguous and should be given a literal meaning. It was yet further held that for taking action under the said Clause a full-fledged department proceedings was not required to be initiated.

10. Per contra, the counsel for the respondent workman has urged that the scope of interference by this Court, in exercise of power under Article 226 of the Constitution of India in the findings of the Industrial Adjudicator, particularly findings of fact is limited; if two views are possible, the view taken by the Industrial Adjudicator is to be upheld. Reliance in this regard is placed on:

- (i) *Essen Deinki Vs. Rajiv Kumar* (2002) 8 SCC 400.
- (ii) *Management of Madurantakam Cooperative Sugar Mills Ltd. Vs. S. Viswanathan* (2005) 3 SCC 193.
- (iii) *Zameer Ahmed Vs. Appellate Authority* 2007 (95) DRJ 90.
- (iv) *DTC Vs. Pradeep Kumar* 2008 III AD (Delhi) 326.

It is further urged that the election for the Municipal Council contested by the respondent workman after four years of termination is irrelevant.

11. The reasoning given by the Industrial Adjudicator of the petitioner Bank having admitted the illegality of its action owing to having offered the settlement proposal of reinstating the respondent workman without back wages before the Conciliation Officer is clearly perverse. The Legislature has provided for the step of conciliation before reference of a dispute in an attempt to minimize disputes between the management and its employees and to sustain industrial harmony. The offers / counter offers given before the Conciliation Officer cannot be treated as an admission by a party and by their very nature are without prejudice to the respective rights and contentions. In fact, the Arbitration & Conciliation Act, 1996 in Section 81 thereof codifies that the proposals made in an attempt for conciliation do not bind the parties in the event of the conciliation failing. If the Industrial Adjudicators were to start treating such offers / counter offers, given in an

attempt to avoid a dispute as an admission by the parties, that would run contrary to the spirit of conciliation and would negate the very purpose of conciliation and neither of the parties to the potential dispute would give any offer or counter offer for settlement for the fear of the same being read against it.

12. The interpretation placed by the Industrial Adjudicator in the present case on the Clause aforesaid of the Bi-partite Agreement is also found to be illogical. The said Clause was inserted in the negotiated Bi-partite Agreement between the banks and their employees to enable the Banks to, in the event of unauthorized absenteeism, treat the employee to have voluntarily retired, rather than being required to proceed against the employee for misconduct. The Banks perform multiple / diverse functions in the present day economy. The entire trade and commerce is dependent on the Banks with the transactions in cash diminishing day-by-day. Naturally, for Banks to provide effective Banking amenities, the Banks have to depend on their staff / employees. If the staff / employees remain unauthorizedly absent, the Banks cannot be expected to function smoothly and which in turn would hamper the trade and commerce. The said Clause having been agreed by the employees themselves cannot be reduced to a mockery and interpreted so as to be un-implementable. If the reasoning / interpretation of the Industrial Adjudicator in the present case were to be accepted, an employee can frustrate the said Clause by never allowing 90 days of

continuous absence and by reporting for duty just short of 90 days. In the present case, the respondent workman appears to have reported on 25th January, 1993 only to frustrate the said clause in as much as he continued to absent thereafter also. As aforesaid, the Clause has been upheld in *Sakattar Singh* (supra). The Clause has to be implemented in its spirit rather than in the manner as done by the Industrial Adjudicator. If the Clause was to be interpreted in its right spirit, I fail to see any reason as to how the conduct of the respondent workman would not fall within the clutches of the said Clause.

13. What strikes one immediately is that neither before the Industrial Tribunal nor before this Court has any reason been given for the admitted unauthorized absenteeism of the respondent workman. If the respondent workman had any grievance regarding his working conditions, he ought to have pursued the same. Nothing has come on record of any representation, complaint or other remedies taken by the respondent workman. In the absence of the same, there is no other option but to conclude that the same is nothing but an alibi to get out of the clutches of the Clause aforesaid of the Bipartite Agreement.

14. The version of the petitioner Bank with respect to the happenings on 25th January, 1993 is believable as opposed to that of the respondent workman. The petitioner Bank on 25th January, 1993 itself issued the letter regarding the same. On the contrary, the respondent workman did not raise

any grievance whatsoever of the alleged unfair treatment meted out to him on that date. If he had not been given any work, in the normal course of human behaviour, he would have recorded the same or asked for work. In any case, he would not have stopped reporting for duty. His admitted absence after 25th January, 1993, supports the version of the petitioner Bank of the visit on 25th January, 1993 being brief and only intended to put a spoke in the wheel of the applicability / operation of the Clause aforesaid of the Bipartite Agreement.

15. Not only did the respondent workman not report for duty after 25th January, 1993 but admittedly did not report for duty within 30 days of the letter dated 3rd March, 1993. Though the respondent workman vide his communication dated 15th March, 1993 again sought to give the excuse of being insulted at the place of his posting and demanded transfer to some other place but chose to remain absent. No employee has a right to be posted at any place. Moreover, the requests for transfer even if entertainable have to be through a proper channel; the same was not being done. Only whenever the respondent workman was called to report for work was the excuse of the working conditions in the place of posting being unfavourable, taken. The facts of the present case speak for themselves. The contest by the respondent workman for the Municipal Elections clearly shows that the respondent workman was at that time pursuing his political ambitions / goals and was not satisfied merely being a Bank employee. He was then looking

for pastures which appeared greener to him than a job in the Bank. If in the face of such facts also a Bank would be held to be not entitled to invoke Clause aforesaid of the Bipartite Agreement, then I fail to see in what conditions such Clause can be invoked.

16. This Court in reaching the aforesaid conclusion is not interfering with any finding of fact. The facts in this case are rather not in dispute at all. It is only the inference drawn from the said facts by the Tribunal which is being interfered with by this Court and which is within the domain of judicial review under Article 226. The inference drawn by the Industrial Adjudicator from the admitted facts is found to be perverse inasmuch as the barometer of reasonability of this Court does not allow the conclusion reached by the Industrial Adjudicator to be held such which a reasonable person can be expected to reach.

17. Resultantly, the writ petition succeeds. The award impugned in the writ petition is set aside / quashed. The action of the petitioner Bank of treating the respondent workman to have voluntarily retired in accordance with the Clause aforesaid of the Bipartite Agreement is held to be legal, valid and justified and in accordance with the said Clause. The respondent workman in accordance with the undertaking given to the Court is directed to, within six weeks from today refund to the petitioner Bank the sum of Rs.66,000/- received by him in pursuance to the order of this Court and also the excess amount over and above the last drawn wages in terms of the order

under Section 17B of the I.D. Act failing which the same shall incur interest at the rate of 9% per annum. The Registry is also directed to after, six weeks herefrom, refund to the petitioner Bank the amount lying deposited in this Court together with interest accrued thereon. However, in the facts of the case, no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

1st July, 2010
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