

M.K. AHUJA

..... Appellant

Through: Mr. M.N. Krishnamani, Senior
Advocate with Mr. Vikas Mahajan,
Advocate.

versus

SYNDICATE BANK

..... Respondent

Through: Mr. S.K. Taneja, Senior Advocate
with Mr. Punit Taneja, Mr. Amit
Kumar, Advocate.

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Reserved on: 16th September, 2010Date of Decision : 23rd September, 2010**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE MANMOHAN**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T**MANMOHAN, J****CM No. 16647/2010 (exemption)**

Allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

LPA 663/2010 & CM No. 16646/2010

1. The present Letters Patent Appeal has been filed challenging the judgment and order dated 01st July, 2010 whereby the learned Single Judge has allowed the respondent-Bank's writ petition being W.P.(C) No.268/2003 and set aside the award dated 08th August, 2002 of the

Industrial Tribunal-cum-Labour Court (hereinafter referred to as 'Tribunal')

2. The relevant facts of the present case are that in April, 1978 the appellant joined the respondent-Bank in non-subordinate cadre and thereafter worked as a Clerk in various branches. Admittedly, the appellant was absent between 29th October, 1992 and 24th January, 1993. The real controversy in the present case revolves around as to what transpired on 25th January, 1993. While it is the case of the appellant that he reported for duty on 25th January, 1993 and carried out duties assigned to him, it is the case of the respondent-Bank that though on 25th January, 1993, appellant was entrusted with work relating to preparation of office notes, sanction letters etc, yet the appellant left the Bank at about 12.50 p.m. without permission and even without doing the work assigned to him. Consequently, according to respondent-Bank, appellant cannot be deemed to be present on 25th January, 1993.

3. It is pertinent to mention that the appellant after 25th January, 1993 neither returned for duty nor wrote any letter to the respondent-Bank to the effect that on 25th January, 1993, he had not been given any work or had remained in the Bank for the whole day. In fact, admittedly, the appellant did not reply to the respondent-Bank's letter dated 25th January, 1993. Thereafter, the respondent-Bank vide its letter dated 03rd March, 1993 invoked Clause 17(a) of the Bi-partite Settlement which reads 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.”

4. In its reply dated 15th March, 1993, appellant for the first time stated that he was not given any work on 25th January, 1993 and that he was wrongly treated as on leave on the said date. The respondent-Bank vide letter dated 24th March, 1993 informed the appellant that his explanation was not found satisfactory and asked him to report for duty in accordance with the aforesaid clause 17 of the Bi-partite Settlement on or before 02nd April, 1993 in terms of letter dated 03rd March, 1993.

5. It is not disputed that the appellant did not report for duty thereafter. Consequently, the respondent-Bank vide letter dated 17th April, 1993 informed the appellant that in accordance with the aforesaid Clause 17(a) of the Bi-partite Settlement, he was deemed to have

voluntarily retired from service, with effect from, 02nd April, 1993.

6. After a gap of three years, the appellant raised a dispute in 1996 and a reference was accordingly made on 30th April, 1997.

7. The Tribunal vide its order dated 08th August, 2002 set aside the respondent-Bank's order dated 17th April, 1993 and awarded the appellant full back wages with all consequential benefits and continuity in service

8. Thereafter, the respondent-Bank filed a writ petition being W.P.(C) No.268/2003 which had been allowed by the learned Single Judge vide the impugned order.

9. Mr. M.N. Krishnamani, learned senior counsel for the appellant-workman submitted that the Tribunal had rightly interpreted the provisions of Clause 17 of the Bi-partite Settlement as the absence of the appellant was not for a period of consecutive ninety days. He pointed out that the appellant had attended office on 25th January, 1993. He further submitted that the learned Single Judge had failed to appreciate that Clause 17 of the Bi-partite Settlement was a stringent provision and the same ought to have been invoked by the respondent-Bank only in the event of conditions specified therein being fulfilled. According to Mr. Krishnamani, since the condition of continuous absence of the appellant-workman for consecutive ninety days was not fulfilled, it was not open to the respondent-Bank to proceed against the

appellant-workman under Clause 17 of the Bi-partite Settlement. In such a situation, according to Mr. Krishnamani, the respondent-Bank could have proceeded against the appellant only under the general provision of law by conducting a departmental inquiry on allegations of unauthorised absence rather than invoking the stringent provision of Clause 17 of the Bi-partite Settlement.

10. Mr. Krishnamani further submitted that the view taken by the Tribunal was a plausible view in the facts and circumstances of the case and the learned Single Judge should not have lightly interfered with the findings of the Tribunal. In this connection, he relied upon the judgments of the Supreme Court in the cases of *Essen Deinki Vs. Rajiv Kumar*, (2002) 8 SCC 400 and *Management of Madurantakam Coop. Sugar Mills Ltd. Vs. S. Viswanathan*, (2005) 3 SCC 193. The relevant passage of the aforesaid judgments are reproduced hereinbelow:-

“A. *Essen Deinki Vs. Rajiv Kumar* (supra) :

“2. *Generally speaking, exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. It is so exercised in the normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the courts below. The finding of fact being within the domain of the inferior tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the article is not called for.*”

B. *Management of Madurantakam Coop. Sugar Mills Ltd.Vs. S. Viswanathan* (supra)

“12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere has he come to the conclusion that the finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.”

11. Having heard Mr. Krishnamani at length, we are of the view that the common thread running through the aforesaid decisions is that the Court should not interfere with the decision of the Tribunal, unless it is illegal/irrational, perverse or suffers from procedural impropriety or shocks the conscience of the court, in the sense that it defies logic or moral standards.

12. In fact, upon a perusal of the impugned order, we find that the learned Single Judge has applied the aforesaid test stipulated by the

Apex Court and has given cogent reasons for setting aside the findings recorded by Tribunal. The relevant portion of the impugned order is reproduced hereinbelow :-

“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 unimplementable. 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.”

13. Moreover, upon a perusal of the appeal papers, we are in agreement with the learned Single Judge that the finding of the Tribunal that the appellant was present on 25th January, 1993 is perverse and illogical.

14. In our opinion, though the appellant had surfaced on the ninetieth day, namely 25th January, 1993, but as he had left after about two hours and that too, without doing the work assigned to him, the appellant cannot be deemed to have been present on the said date. The appellant's subsequent conduct as well as the fact that he did not reply to the letter dated 25th January, 1993 clearly shows that his appearance in the Bank on the ninetieth day of the leave was a malicious attempt on his part to circumvent Clause 17(a) of the Bipartite Settlement.

15. We are also of the view that an employee cannot defeat the aforesaid Clause 17(a) of the Bi-partite Settlement by reporting for duty on ninetieth day or just before the expiry of ninety days and thereafter remain unauthorisedly absent once again and contend that ninety days of unauthorised absence has not been completed.

16. Further, the appellant's subsequent conduct of contesting Municipal election and of filing a reference after a gap of nearly three

years clearly shows that the appellant had not only unauthorisedly absented himself but he also had no intention of joining his duties. Consequently, in our view, Clause 17(a) of the Bi-partite Settlement has been rightly invoked by the respondent-Bank.

17. Accordingly, the present appeal, being bereft of any merit, is dismissed but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 23 , 2010

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