

Manager at New Delhi tendering his resignation from the Bank with effect from that date. He further stated in the said letter that in terms of Regulation 20 of the Punjab & Sind Bank (Officers) Service Regulations 1982 ('Regulations') he had deposited three months' salary with the Bank. He also enclosed a photocopy of the cash deposit receipt. He, therefore, requested the Bank to accept his resignation with immediate effect and release his terminal benefits. The Petitioner has also placed on record a copy of Office Order dated 12th August 1995 whereby the charge of security items were taken over from the Petitioner and he was asked to hand them over to one Mr. Jaswinder Singh Nadha another employee of the Bank.

3. The Senior Manager at Sri Ganganagar on 14th August 1995 wrote to the Petitioner stating that he was relieved from his service with instruction to report to the Zonal Manager at Jaipur immediately. Apparently, this was issued pursuant to a decision taken by the Bank to transfer the Petitioner from Sri Ganganagar to Jaipur. On receipt of the said letter the Petitioner wrote to the Senior Manager of the Bank at Sri Ganganagar stating that he had already resigned from service on 12th August 1995. He requested that his terminal benefits be released.

4. On 7th October 1995 the Zonal office of the Bank at Jaipur issued a show cause notice to the Petitioner stating that they had come across a newspaper report in the 'Pratap Kesari' published from Sri Ganganagar on 17th September 1995 in which it was stated that one Mr. Pratap Singh, Senior Manager of Bank of Punjab had told the correspondent that Bank of Punjab would shortly be opening a computerized branch in the city. The show cause notice alleged that the Petitioner had acted as Senior Manager of the Bank of Punjab even without his resignation dated 12th August 1995 being accepted by the competent authority of the Bank. In the circumstances, the Petitioner

was asked to show cause why action should not be taken against him for violating Rule 6 of the Punjab and Sind Bank (Officers) Conduct Rules (hereinafter `Rules'). The Petitioner replied to the show cause notice on 8th October 1995 denying that he had joined any other service or that he had violated Rule 6. He reiterated that he had already resigned from the Bank with effect from 12th August 1995.

5. On 27th October 1995 another show cause notice was issued to the Petitioner by the Bank stating that he had not reported for duty at the Zonal Office in Jaipur despite having being transferred there by an order dated 14th August 1995. The Bank also informed that he would be discharged from the Bank only upon acceptance of his resignation by the competent authority. He was asked to show cause why further disciplinary action should not be taken against him for violation of Clause 13 (1) (2) of the Rules. The Petitioner replied on 10th November 1995 denying the above charge. He reiterated that he had already resigned from 12th August 1995 and sought release of the terminal benefits.

6. On 21st November 1995 the Bank communicated to the Petitioner the articles of charge and the statement of allegations in the departmental enquiry. There were two articles of charge. The first was that the Petitioner had engaged himself in another employment without "sanction of his resignation by the competent authority." The second charge was that he had absented himself from the duty without sanction of leave by the competent authority. The above acts were stated to be in violation of Clause 6 (1), 6 (3), 13 (1), 13 (2) read with Clause 24 of the Rules. As regards the first article of charge, reliance was placed upon the news item published in the 'Pratap Kesari' Sri Ganganagar on 17th September 1995. As regards the second article of charge, reliance was placed on the transfer order dated 14th August 1995.

7. The Petitioner replied to the articles of charge on 6th December 1995. An enquiry officer was appointed on 13th December 1995. The Petitioner sent a legal notice to the Bank on 20th December 1995. The Petitioner did not participate in the enquiry proceeding. The departmental proceedings proceeded *ex parte*. The Bank examined three witnesses who claimed to have seen the Petitioner working in the Bank of Punjab. On 11th January 1997 a letter was written to the Petitioner by the Bank offering him a final opportunity of a personal hearing in the inquiry for and filing his written submissions. On 28th January 1997 the Petitioner wrote to the Enquiring Authority reiterating that he had already resigned from service with effect from 12th August 1995 and therefore there was no question of the Bank proceeding with the inquiry.

8. The Enquiry Officer submitted his report on 15th March 1997 in which it was held that the evidence led on behalf of the Bank remained un rebutted by the Petitioner who had participated in the inquiry. The Enquiry Officer *inter alia* noted that the Bank had been silent over the notice period salary. While the Regulations only authorize the Bank to terminate the services of an officer by giving notice or salary in lieu of notice, the employee could resign only after giving three months' notice. There was no provision permitting the resigning officer to deposit three months' salary in lieu of notice. The Enquiry Officer observed that the three months' salary deposited by the Petitioner had been appropriated by the Bank without any protest or reservation. The Enquiry Officer then proceeded to observe:

“Such, unconditional appropriation of notice period salary raises question mark, to be answered by none but the management only and no explanation has been placed before me in this case, as such, there will be grave injustice with the chargesheeted officer despite his absence and non-participation in enquiry proceedings, if my findings do not give reasonable and fair analysis of conduct of appropriating the

notice period salary/tendered by the CSO, who undoubtedly has no right to relinquish his employment contrary to the service regulations. This being a mixed question, I leave to the prudence of competent authority to decide, and report the finding of enquiry that the charges may be treated proved as undefended.”

9. On receipt of the report of the Enquiry Officer, the Petitioner again wrote to the Zonal Manager on 5th April 1997 reiterating his stand. *Inter alia*, he submitted that after submitting his resignation he did not join any service up to 26th October 1996 on which date he joined the Bank of Punjab. He maintained that after resigning from the Bank he ceased to be an employee of the Bank. Therefore the entire enquiry proceedings stood vitiated.

10. The enquiry report was considered by the DA who passed the impugned order dated 14th May 1997 dismissing the Petitioner’s representation. The DA construed the letter dated 12th August 1995 as only an offer by the Petitioner to resign and that without its acceptance by the Bank, the Petitioner could not have resigned from services. The DA held the charges proved and imposed the punishment of dismissal from service. The Petitioner’s appeal against the dismissal was not disposed of by the AA despite a legal notice from the Petitioner. In the circumstances, the present writ petition was filed. After a notice was issued in the writ petition, a counter affidavit was filed enclosing *inter alia* a copy of the order dated 19th March 2001 of the AA dismissing the Petitioner’s appeal. The Petitioner was thereafter permitted to amend the writ petition to challenge the said order of the AA as well.

11. This Court has heard the submissions of Mr. A.B. Dial, learned Senior counsel appearing for the Petitioner and Mr. Jagat Arora, learned counsel appearing for the

Bank, respectively.

12. Rule 20 (2) of the Rules which concerns resignation by an employee of the Bank reads as under:

“2. An Officer shall not leave or discontinue his service in the Bank without first giving a notice in writing of his intention to leave or discontinue his service or resign. The period of notice required shall be three months and shall be submitted to the Competent Authority as prescribed in these regulations. Provided further that the Competent Authority may reduce the period of three months, or remit the requirement of notice.”

13. Sub-rule 1 (a) of Rules talks of the Bank terminating the services of an employee by giving three months' notice or “emoluments in lieu thereof”. Rule 20 (2) on the other hand does not expressly permit an employee who wishes to resign to avoid giving three months' advance notice by paying the corresponding salary in lieu thereof to the Bank. The proviso to Rule 20 (2) permits the Competent Authority to reduce the notice period of three months or remit the requirement of notice altogether. In the present case at the time when the Petitioner tendered his resignation on 12th August 1995, he had not obviously given three months' advance notice. In the absence of any remission by the Competent Authority of the requirement of notice, the Petitioner could not have avoided the said requirement by depositing three months' salary with the Bank. The acceptance of such deposit by the Bank did not make a difference to the legal position in terms of Regulation 20 (2). This meant that the Petitioner's resignation letter tendered on 12th August 1995 would not be effective till the expiry of three months' thereafter. During that period the Bank could have either accepted or refused the resignation. The admitted position is that in the three-month period after 12th August 1995 the Bank did not communicate to the Petitioner its decision either way:

i.e. acceptance or rejection of his resignation. The Bank instead kept issuing show cause notices to the Petitioner for his having joined services with the Bank of Punjab on the basis of a news item in the 'Pratap Kesari' and on the ground that he failed to report for duty at Jaipur where he was transferred. The Petitioner's reply to each show cause notice asserted that he had resigned with effect from 12th August 1995. The Bank's reply to this was that his resignation was still not accepted by the Competent Authority of the Bank. The fact however is that at no point in time was a decision taken by the Bank to reject the resignation letter of the Petitioner.

14. It was submitted by Mr. Arora, learned counsel for the Bank, that the show cause notices issued to the Petitioner and the disciplinary enquiry commenced against him implied that the Bank had rejected the Petitioner's resignation letter. This submission overlooks the fact that Rule 20 (2) requires the employee seeking to resign to give three months' advance notice to the Bank, it is expected that during the said period of three months the Bank would communicate to the employee its decision on whether it wants to accept or reject the resignation. The commencement of the disciplinary proceedings against the Petitioner cannot be taken to be a refusal of the resignation as it happened three months after the resignation. The disciplinary proceedings commenced on 21st November 1995 by which time the resignation of the Petitioner had taken effect and he was no longer an employee of the Bank. On a reasonable interpretation of Rule 20 (2), if the Bank did not communicate to the Petitioner its refusal of his resignation within three months after 12th August 1995, it should be taken that it had been accepted by the Bank on the expiry of the period of three months. The Bank cannot be permitted to sit on an employee's resignation letter and not communicate its decision thereon for an indefinite period. That would render its action arbitrary and unreasonable.

15. The first article of charge placed the burden on the Bank to show that the Petitioner had in fact been employed with the Bank of Punjab even without his resignation being accepted by the Bank. According to the Petitioner, he joined Bank of Punjab only on 26th October 1996, by which time he was no longer in the service of the Bank. Instead of relying on secondary sources like the news item in 'Pratap Kesari' which incidentally the Petitioner repeatedly denied, or on the evidence of three persons who were not cross-examined, the Bank could have easily ascertained from the Bank of Punjab as to when in fact the Petitioner joined its service. This was however not done. As regards the second charge, the absence without permission if at all was only for a period of three months after the tendering of the letter of resignation. Considering that the Bank had appropriated without protest the three months' salary deposited by the Petitioner in lieu thereof, the benefit of doubt in this regard ought to have been given to the Petitioner. Consequently, the finding returned by the Enquiry Officer holding both charges to be proved is unsustainable in law. The Enquiry Officer was himself unsure of the correct legal position emanating from the Petitioner's resignation letter accompanied by the deposit of three months' salary in lieu of notice. The conclusion of the DA on both charges in the impugned order dated 14th May 1997 is contrary to the correct legal position as explained above. The DA failed to appreciate that on the date of commencement of the disciplinary proceedings the Petitioner was no longer an employee of the Bank and was justified in not participating in the proceedings.

16. For the above reasons this Court sets aside the impugned order dated 14th May 1997 of the DA and of the consequential order dated 19th March 2001 of the AA dismissing the Petitioner's appeal. Accordingly, this writ petition is allowed and a direction is issued to the Respondent Bank to release to the Petitioner in accordance with law his

gratuity amounts due and leave encashment in accordance with the applicable Rules of the Bank. The above amounts are directed to be paid to the Petitioner within a period of eight weeks together with simple interest @ 6% per annum from the date when the said amounts became due till the date of payment. As regards the claim of interest on the provident fund amount, the Bank will examine such claim and make payment, if permissible and if not already done, in accordance with law. The Bank will also pay to the Petitioner within a period of eight weeks from today costs of Rs. 5,000/-.

17. The writ petition is disposed of in the above terms.

JULY 08, 2011
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S. MURALIDHAR, J