

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LETTERS PATENT APPEAL NO. 481 OF 2010

% Reserved on : 6th January, 2011.
Date of Decision: 10th February, 2011.

U.P. SINGH

.... Appellant in person.

VERSUS

PUNJAB NATIONAL BANK Respondent.
Through Mr. Rajat Arora, advocate.

CORAM:

HON'BLE MR. JUSTICE DIPAK MISRA, THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether 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 YES in the Digest ?

SANJIV KHANNA, J.:

Mr. U.P. Singh, appellant who appears in person, assails judgment and order dated 26th February, 2010 of the learned Single Judge allowing the writ petition no. 7834/2003 filed by the respondent-Punjab National Bank (hereinafter referred to as PNB, for short) quashing the Award dated 27th August, 2003 passed by the Central Government Industrial Tribunal- cum- Labour Court (CGIT, for short). By the impugned judgment, the learned Single Judge has set aside the CGIT's finding that the action of the respondent-PNB

deeming the appellant to have been voluntarily retired was not justified. Relief of reinstatement in service with full back wages and consequential benefits in the impugned Award has been quashed.

2. The appellant-workman was appointed in service with the respondent-PNB on 20th June, 1977. He was initially working at respondent-PNB's branch office Barabanki (U.P.) and was transferred to branch office Zaidpur, Barabanki and then to Shahjanhanpur (U.P.) in August, 1978. On 14th June, 1982 he was suspended from services of the respondent-PNB for acts of disorderly behavior. Pursuant to the finding recorded in the disciplinary proceedings, the appellant was held guilty of all charges and awarded punishment of stoppage of two graded increments with cumulative effect vide order/letter dated 28th September, 1983. The said order has been quoted by the appellant in the Appeal. Relevant portion reads:

“.....Accordingly, the punishment of ‘Dismissal without Notice’ has been reduced to ‘Stoppage of two Graded Increments with cumulative effect’ which the undersigned hereby confirm.

You will not be paid anything except the subsistence allowance, already drawn by you during your period of suspension, as per rules.

You are accordingly advised to report for further duties to the Manager, BO: Bhagwantnagar, Unnao immediately. You will be deemed to have been reinstated in the Bank's service from the date you report for the duty at BO : Bhagwantnagar, Unnao.”
(emphasis supplied)

3. The appellant did not join duty at the branch office Bhagwantnagar, Unnao. Relying upon clause XVI of Fourth Bipartite

Settlement dated 17th September, 1984, by order dated 5th December, 1984 the appellant was deemed to have voluntarily retired from service.

4. The appellant wrote protest letters and after about six years on 28th August, 1990 raised a dispute before the Assistant Labour Commissioner and on 15th November, 1991, the following reference was made :

“Whether the action of the Management of Punjab National Bank in treating Shri U.P.Singh, Clerk/Cashier as deemed to have retired voluntarily w.e.f. 5.12.1984 is justified? If not, to what relief is the workman entitled to?”

5. By Award dated 27th August, 2003, reference was answered in favour of the appellant holding, inter alia, that Clause XVI of the Fourth Bipartite Agreement was wrongly invoked by the respondent-PNB. The appellant was wrongfully not reinstated in service and the respondent-PNB had remained silent to the lawful demand of the appellant to revoke his suspension, to be reinstated in service and resume his duties. It was observed, the respondent-PNB had failed to prove and establish a genuine cause for transfer of the appellant from District Shahjahanpur to Bhagwantnagar, Unnao. CGIT, in view of the said findings, directed that the appellant was entitled to reinstatement in service with full back wages w.e.f. 28th September, 1983 along with interest @ 9% p.a. and all other consequential benefits.

6. Learned Single Judge in the impugned judgment has set aside the aforesaid finding holding that Clause XVI of the Fourth Bipartite Settlement was applicable and the post held by the appellant was transferable. Learned Single Judge has specifically noticed and has rejected the ratio/finding of the CGIT that during suspension, contract of employment is suspended and consequently Rules of the respondent-PNB including bipartite agreement containing the provision of deemed voluntary retirement were not applicable. Learned Single Judge has held that reliance placed by the CGIT in the decision in *Hotel Imperial versus Hotel Workers' Union* AIR 1959 SC 1342 was incorrect in view of the exposition of law in the subsequent decisions of the Supreme Court in *Khem Chand versus Union of India* AIR 1963 SC 687, *Gidroniya versus The State of Madhya Pradesh* AIR 1970 SC 1494, *Capt. M. Paul Anthony versus Bharat Gold Mines Ltd.* AIR 1999 SC 1416 and *Ram Lakhan versus Presiding Officer* (2001) 3 SCC 161.

7. Challenging the said findings of the learned single Judge, the appellant has before us relied upon the following observations of the Supreme Court in *Hotel Imperial* (supra):

“10. The first question therefore that falls for consideration is the extent of the power of the employer to suspend an employee under the ordinary law of master and servant. It is now well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that

the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. These principles of the ordinary law of master and servant are well settled and have not been disputed before us by either party. Reference in this connection may be made to *Hanley v. Pease and Partners Limited*, *Wallwork v. Fielding*, *Secretary of State for India-in-Council v. Surendra Nath Goswami* and *Rura Ram v. Divisional Superintendent, N.W. Railway*.”

8. In *T. Cajee versus U. Jormanik Siem and another* AIR 1961

SC 276, the Supreme Court has clarified the aforesaid observations

made in the case of *Hotel Imperial* (supra) as under :-

“13. It is urged on the basis of these observations that in any case the respondent could not be suspended. Suspension is of two kinds. In the first place, suspension may be as a punishment, but the present is not a case of this kind of suspension; in the second place interim suspension may be made pending inquiry into a case where removal is the result sought. It was this type of interim suspension which was dealt with in the case of *Hotel Imperial* and it was pointed out that without an express term in the contract or without some provision of a statute or the rules there could not be interim suspension in the sense that the master could withhold the wages of the servant. But that case did not lay down that the master could not forbid the servant from working while he was inquiring into his conduct with a view to removing him from service. It was specifically said there that if the master does so, namely, forbids the servant to work and thus in fact suspends him as an interim measure he will have to pay the wages during the period of interim suspension. These wages or payment for the work done or emoluments of the office held could not be withheld in whole or in part unless there is power to make an order of interim suspension either in the contract of employment or in the statute or the rules framed thereunder. The effect of that decision is that in the absence of such power the master can pass an order of interim suspension but he will have to pay the servant according to the terms of contract between them.....”

9. The aforesaid dictum of the Supreme Court, as rightly pointed out by the learned Single Judge, was considered and explained in ***R.P. Kapur versus Union of India*** AIR 1964 SC 687 and it was opined as follows:

“10. The General law on the subject of suspension has been laid down by this Court in two cases, namely, *Management of Hotel Imperial New Delhi v. Hostel Workers' Union*, and *T. Cajee v. U. Jormanik Siem*. These two cases lay down that it is well settled that under the ordinary law of master and servant the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant but must arise either from an express term in the contract itself or a statutory provision governing such contract. It was further held that an order of interim suspension could be passed against an employee while inquiry was pending into his conduct even though there was no specific provision to that effect in his terms of appointment or in the rules. But in such a case he would be entitled to his remuneration for the period of his interim suspension if there is no statute or rule existing under which it could be withheld.

11. The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in Section 16 of the General Clauses Act, 10 of 1897, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present

case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as punishment which is a different matter altogether depending upon the rules in that behalf. On general principles therefore the government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. Or the government may proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. These general principles will apply to all public servants but they will naturally be subject to the provisions of Article 314 and this brings us to an investigation of what was the right of a member of the former Secretary of State's Services in the matter of suspension, whether as a penalty or otherwise."

10. Subsequently, in *Balvantrai Ratilal Patel versus State of*

Maharashtra AIR 1968 SC 800 it was reiterated as under:

"3. The first question to be considered in this appeal is whether Government had the power to suspend the appellant by its order dated February 13, 1950 pending enquiry into his alleged misconduct. It was contended on behalf of the appellant that the power to suspend is not an implied term in an ordinary contract between master and servant and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. It was urged that there was no express provision in the Bombay Civil Services Rules granting a power to the Government to suspend a Government servant pending enquiry into the allegations made against him. The argument was put forward that in the absence of any express provision either in the contract of employment or in any statute or statutory rules governing such employment, there was no power to suspend a public servant pending inquiry into the allegations of his misconduct. We are unable to accept the argument put forward on behalf of the appellant as correct. The general law on the subject of suspension has been laid down by this Court in three cases viz. *Management of Hotel Imperial, New Delhi v. Hotel Workers Union*, *T. Cajee v. U. Jormanik Siem*, and *R.P. Kapur v. Union of India*. It is now well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express, term in the contract itself. Ordinarily,

therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. This principle of law of master and servant is well-established: (See *Hanley v. Pease & Partners, Ltd.*, *Wallwork v. Fielding*, and the judgment of Cotton, L.J. in *Boston Deep Sea Fishing and Ice Co. v. Ansell*). It is equally well settled that an order of interim suspension can be passed against the employee while an inquiry is pending into his conduct even though there is no such term in the contract of appointment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which it could be withheld. In this connection it is important to notice the distinction between suspending the contract of service of an officer and suspending an officer from performing the duties of his office on the basis that the contract is subsisting. The suspension in the latter sense is always an implied term in every contract of service. When an officer is suspended in this sense it means that the Government merely issues a direction to the officer that so long as the contract is subsisting and till the time the officer is legally dismissed he must not do anything in the discharge of the duties of his office. In other words, the employer is regarded as issuing an order to the employee which, because the contract is subsisting, the employee must obey.

4. The general principle therefore is that an employer can suspend an employee pending an inquiry into his misconduct and the only question that can arise in such suspension will relate to payment during the period of such suspension. If there is no express term relating to payment during such suspension or if there is no statutory provision in any enactment or rule the employee is entitled to his full remuneration for the period of his interim suspension. On the other hand, if there is a term in this respect in the contract of employment or if there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment will be made in accordance therewith. This principle applies with equal force in a case where the Government is an employer and a public servant is an employee with this qualification that in view of the peculiar structural hierarchy of Government administration, the employer in the case of employment by Government must be held to be the authority which has the power to appoint the public servant concerned. It follows therefore that the authority entitled to appoint the public servant is entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry

against him. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or statutory rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. On general principles therefore the government like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. The Government may also proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. As we have already pointed out, the question as to what amount should be paid to the public servant during the period of interim suspension or suspension as a punishment will depend upon the provisions of the statute or statutory rules made in that connection.”

11. In the light of the aforesaid ratio, it is clear that an order suspending workman pending enquiry does not bring an end the employer-employee relationship as contended by the appellant. The employee continues to remain an employee during the period of suspension pending departmental enquiry.

12. The aforesaid proposition gets further fructified by the view expressed by the Constitution Bench in ***Khem Chand*** (supra) wherein it has been observed :-

“15. An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of the order of suspension is that though he continued to be a member of the Government service he was not permitted to work, and further, during the period of his suspension he was paid only some allowance – generally called “subsistence allowance” – which is normally less than his salary – in stead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that the order of suspension affects a government servant injuriously. There is no basis for thinking

however that because of the order of suspension he ceases to be member of the service.....”

13. A larger bench of the Supreme Court in *V.P. Gindroniya versus State of Madhya Pradesh and another* (1970) 1 SCC 362 have reiterated and pointed out the distinction between suspending a contract of service of a servant and suspending an employee from performing his duties at office on the basis of a contract which is subsisting. Suspension in the latter case is an implied term of the contract of service. This means that the employer issues a direction to the employee that he should not do the service required of him for a particular period. The employer can issue the said direction or order to the employee because the contract of service is subsisting. Suspension does not bring to an end or supersede the contract of service during suspension of an employee pending inquiry. Employer-employee relationship subsists and continues.

14. Similar view has been taken in *Capt. M.Paul Anthony* (supra) wherein it has been held:

“**26.** To place an employee under suspension is an unqualified right of the employer. This right is conceded to the employer in service jurisprudence everywhere. It has even received statutory recognition under service rules framed by various authorities, including the Government of India and the State Governments. [See: for example, Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules.] Even under the General Clauses Act, 1897, this right is conceded to the employer by Section 16 which, inter alia, provides that power to appoint includes power to suspend or dismiss.

27. The order of suspension does not put an end to an employee's service and he continues to be a member of the service though he is not permitted to work and is paid only subsistence allowance which is

less than his salary. (See: *State of M.P. v. State of Maharashtra.*)”

[Reference can be also made to para 7 in the case of **Ram Lakhan** (supra)]

15. We have quoted above, the order/letter dated 28th September, 1983 passed by the respondent-PNB. The said order specifically states that the appellant was required to report for duty to Manager, Branch Office Bhagwanthnagar, Unnao immediately and would be deemed to be reinstated in service from the date he reports for duty. In other words, the order of suspension was recalled/withdrawn and the appellant was required to report for duty. The aforesaid action of the respondent-PNB was in accord with para 521.10(b) of the Shastri Award. It is not possible to accept the contention of the appellant that a composite order imposing penalty and directing reinstatement could not be passed. There is no such statutory bar or prohibition. Even common sense cannot support the said contention.

16. The appellant had submitted that the order transferring the appellant and asking him to report at Branch Office Bhagwanthnagar, Unnao amounted to punishment. It is not possible to agree with the said contention. There is no such specific finding given by the CGIT. The employment was transferable and after the suspension was revoked, the appellant was required to be posted. Facts noted above show that the appellant had been earlier transferred from Barabanki to Zaidpur and then to Shahjanhanpur. As per the appellant himself,

Bhagwantnagar, Unnao is located at a distance of 350 kms from Shahjanhanpur. Place of posting has to be as per the requirement of the employer and is an exigency of service. As the appellant did not report to Branch Office Bhagwantnagar, Unnao within 30 days, the respondent-PNB wrote a letter dated 12th May, 1984 at his permanent and last known address by registered A.D. and UPC but the appellant did not respond. Show cause notice dated 18th August, 1984 was issued to the appellant warning him. Thereafter advertisement was published in the newspaper on 24th August, 1984 drawing attention of the appellant to Clause XVI of the Fourth Bipartite Settlement under the heading 'voluntary cessation of employment by the employees'. Publication giving a similar warning was again taken out in a newspaper on 8th October, 1984 and the appellant was informed that unless he joins his duty he would be deemed to have retired from the service of the respondent-PNB. The appellant failed to respond and join duty and vide order dated 5th December, 1984 the appellant was deemed to have voluntarily retired from service. The respondent-PNB has paid subsistence allowance till 5th September, 1984 and thereafter stopped paying the same. It is apparent from the aforesaid facts that the appellant was adamant and unmindful of the repeated notices and warnings issued to him. He did not bother or care to report for duty. It is not possible to agree with the contention of the appellant that writing letters or going on hunger strike shows and proves that the appellant was interested in working but was being prevented from

joining duty. On the other hand, it shows that the appellant had adopted a contiguous, inflexible, confrontationist and hostile attitude. It is not possible to accept the contention of the appellant that asking him to report at Branch Office Bhagwantnagar, Unnao, located at a distance of 350 kms, without paying him the cost/expenses for travel, entitled him to disregard and disobey the said Order. The appellant was being paid subsistence allowance and after reporting for duty could have claimed transportation cost/expenses, as per Rules. It is also apparent from the conduct of the appellant that he is responsible for what has happened and the respondent-PNB were left with no option but to take action in accordance with the Fourth Bipartite Settlement.

17. As far as Clause XVI of the Fourth Bipartite Settlement is concerned, the appellant has not questioned or challenged the validity of the said Clause inspite of being specifically asked the said question. Learned single Judge has examined the Clause XVI of the Fourth Bipartite Settlement in paras 21 to 24 of the impugned judgment. He has also referred to two decisions of the Supreme Court in the case of *Delhi Transport Corporation versus Sardar Singh* (2004) 7 SCC 574 and *Metropolitan Transport Corporation versus B. Venkatesh* (2009) 9 SCC 601.

18. In *Viveka Nand Sethi versus Chairman, J&K Bank Ltd* (2005) 5 SCC 337 it was observed:

“21. Clause 2 of the bipartite settlement raises a legal fiction, which is of wide import. Once the action on the part of the employer is found to be fair, the court in view of such legal fiction would call upon the workman to prove the contra. It will bear repetition to state that the only defence which came to be raised by the workman was non-applicability of the bipartite settlement. The notice dated 31-12-1983 refers to the said settlement by necessary implication, as on the failure of the workman to resume his duties by 15-1-1984, it was stated that he would be deemed to have been discharged from the services of the Bank. Yet again in terms of the memorandum dated 20-2-1984, attention of the workman was drawn to the fact that his application for grant of leave was neither in the prescribed form nor any medical certificate was attached thereto. It was pointed out that the medical certificate shows that he was under the doctor’s treatment from 22-10-1983 to 22-1-1984 and as such he should have reported for duties on 23-1-1984 and as he failed to do so, it gave rise to an inference that he was not interested to continue in the Bank’s services. He did not submit any satisfactory explanation nor did he file any valid medical certificate. It was in that situation, the order dated 17-5-1984 was issued which again referred to the provisions contained in memorandum of settlement dated 8-9-1983. The workman ex facie appears to have accepted the said order as for a long period he maintained silence. Had he been interested in the Bank’s services, it was expected of him to resume his duties and/or file proper application for grant of medical leave with a valid medical certificate.

22. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. [See *Gurjeewan Garewal (Dr.) v. Dr. Sumitra Dash.*] The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. (See *State of Punjab v. Jagir Singh* and *Karnataka SRTC v. S.G. Kotturappa.*)

23. The contention raised at the Bar appears to be squarely covered by two decisions of this Court relied upon by Mr Alex. In *Syndicate Bank Wadhwa*, J. speaking for the Division Bench observed:

“14. Two principles emerge from the decisions: (1) principles of natural justice and duty to act in a just, fair and reasonable manner have to be read in the Certified Standing Orders which have statutory force. These can be applied by the Labour Court and the Industrial Tribunal even to relations between the

management and workman though based on contractual obligations; and (2) where domestic inquiry was not held or it was vitiated for some reason the Tribunal or Court adjudicating an industrial dispute can itself go into the question raised before it on the basis of the evidence and other material on record.

15. In the present case action was taken by the Bank under clause 16 of the Bipartite Settlement. It is not disputed that Dayananda absented himself from work for a period of 90 or more consecutive days. It was thereafter that the Bank served a notice on him calling upon him to report for duty within 30 days of the notice stating therein the grounds for the Bank to come to the conclusion that Dayananda had no intention of joining duties. Dayananda did not respond to the notice at all. On the expiry of the notice period the Bank passed orders that Dayananda had voluntarily retired from the service of the Bank.”

It was further held:

“18. The Bank has followed the requirements of clause 16 of the Bipartite Settlement. It rightly held that Dayananda has voluntarily retired from the service of the Bank. Under these circumstances it was not necessary for the Bank to hold any inquiry before passing the order. An inquiry would have been necessary if Dayananda had submitted his explanation which was not acceptable to the Bank or contended that he did report for duty but was not allowed to join by the Bank. Nothing of the like has happened here. Assuming for a moment that inquiry was necessitated, evidence led before the Tribunal clearly showed that notice was given to Dayananda and it is he who defaulted and offered no explanation of his absence from duty and did not report for duty within 30 days of the notice as required in clause 16 of the Bipartite Settlement.”

19. Recently, in ***Regional Manager, Central Bank of India versus***

Vijay Krishna Neema AIR 2009 SC 2200 it has been held:

“13. Clause 16 of the Shastri Award reads as under:

“16. Where an employee has not submitted any application for leave and absents himself from work for a period of 90 or more consecutive

days without or beyond any leave to his credit or absents himself for 90 days or more consecutive days beyond the period of leave originally sanctioned or subsequently extended or where there is satisfactory evidence that he has taken up employment in India or the management is satisfied that he has no present intention of joining duties, the management may at any time thereafter give a notice to the employee's last known address calling upon the employee to report for duty within thirty days of the notice, stating inter alia the grounds for the management 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 thirty days or unless he gives an explanation for his absence 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 thirty 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 services."

14. The said Award provides for the mode and manner in which service of notice shall be effected in the following terms:

"Issue of notices and orders.—Notices which are required to be given shall be served individually on the employees affected and their acknowledgments taken, and shall also be exhibited on the notice boards of the bank at the offices or establishments concerned. Such notices as are so exhibited shall be in English and also in the principal language of the district or locality in which each such office or establishment is situated. Any notice, order, charge-sheet, communication or intimation which is meant for an individual employee shall be in a language understood by the employee concerned. In the case of an absent employee notice shall be sent to him by registered post, with acknowledgment due."

15. The question as regards validity of Clause 16 of Shastri Award and/or provisions akin thereto is no longer res integra. An employee may, in certain situations, abandon or deemed to have abandoned his job. What constitutes abandonment may be a matter of a statutory provision or agreement between the employer and the Union. Although absence without leave for a long time may constitute a grave misconduct on the part of the employee concerned, in a case of this nature, in view of Clause 16 of the Shastri Award, an employee can be treated to have ceased from employment.

16. In *Viveka Nand Sethi v. J&K Bank Ltd.* this Court, inter alia, relying upon the decision of this Court in *Punjab & Sind Bank v. Sakattar Singh and Syndicate*

Bank v. Staff Assn., held as under: (*Viveka Nand Sethi case*)

“15. The bipartite settlement is clear and unambiguous. It should be given a literal meaning. A bare perusal of the said settlement would show that on receipt of a notice contemplated thereunder, the workman must either: (1) report for duties within thirty days; (2) give his explanation for his absence satisfying the management that he has not taken any employment or avocation; and (3) show that he has no intention of not joining the duties. It is, thus, only when the workman concerned does not join his duties within thirty days or fails to file a satisfactory explanation, as referred to hereinbefore, that the legal fiction shall come into force. In the instant case except for asking for grant of medical leave, he did not submit any explanation for his absence satisfying the management that he has not taken up any other employment or avocation and that he had no intention of not joining his duties.

* * *

20. It may be true that in a case of this nature, the principles of natural justice were required to be complied with but the same would not mean that a full-fledged departmental proceeding was required to be initiated. A limited enquiry as to whether the employee concerned had sufficient explanation for not reporting to duties after the period of leave had expired or failure on his part on being asked so to do, in our considered view, amounts to sufficient compliance with the requirements of the principles of natural justice.”

The same view was reiterated by this Court in *New India Assurance Co. Ltd. v. Vipin Behari Lal Srivastava*.

17. Principle of natural justice, it is trite, does not operate irrespective of the statutory provisions. It was not a case where like *Uptron India Ltd. v. Shammi Bhan* and *Scooters India Ltd. v. M. Mohammad Yaqub*, no notice was required to be issued. Clause 16 of the Shastri Award provides for issuance of such notice. If despite service of notice the employee did not report for duty, the consequences thereof would ensue.

18. In *Banaras Hindu University v. Shrikant*, upon referring to *D.K. Yadav v. J.M.A. Industries Ltd.*, *Uptron India Ltd.* and *Scooters India Ltd.*, it was opined: (*Shrikant case*)

“57. The matter may, however, be different in a case where despite having been given an opportunity of hearing, explanation regarding his unauthorised absence is not forthcoming or despite giving him an opportunity to join his duty, he fails to do so, as was the case in *Punjab & Sind Bank v. Sakattar Singh*.”

19. This Court upon considering *Viveka Nand Sethi*, held as under: (*Shrikant case*)

“60. A provision relating to abandonment of service came up for consideration yet again in *Viveka Nand Sethi v. J&K Bank Ltd.* before a Division Bench of this Court. This Court opined that although in a case of that nature, principles of natural justice were required to be complied with, a full-fledged departmental enquiry may not be necessary, holding:

‘20. ... A limited enquiry as to whether the employee concerned had sufficient explanation for not reporting to duties after the period of leave had expired or failure on his part on being asked so to do, in our considered view, amounts to sufficient compliance with the requirements of the principles of natural justice.’

61. Mr Dwivedi placed strong reliance upon the decision of this Court in *Aligarh Muslim University v. Mansoor Ali Khan*. In that case, interpretation of Rule 5(8)(ii) came up for consideration which is in the following terms:

‘5. (8)(ii) An officer or other employee who absents himself without leave or remains absent without leave after the expiry of the leave granted to him, shall, if he is permitted to rejoin duty, be entitled to no leave allowance or salary for the period of such absence and such period will be debited against his leave account as leave without pay unless his leave is extended by the authority empowered to grant the leave. Wilful absence from duty after the expiry of leave may be treated as misconduct for the purpose of Clause 12 of Chapter IV of the Executive Ordinances of AMU and Para 10 of Chapter IX of the Regulations of the Executive Council.’

It was held that a show-cause notice and reply would be necessary. If no show-cause notice had been given, this Court held that the principles of natural justice would be held to be complied with.—

20. Yet again in *U.P. State Bridge Corpn. Ltd. v. U.P. Rajya Setu Nigam S. Karamchari Sangh*, it was held as under:

“23. *D.K. Yadav* is an authority for the proposition that the principles of natural justice would have to be read in the standing orders. That was a case where there was a standing order similar to CSO L-2.12 except that 8 days’ margin was granted within which the workman was required to return and satisfactorily explain the reasons for his absence or inability to return after the expiry of leave. This view was reiterated in the later decision of this Court in *Lakshmi Precision Screws Ltd. v. Ram Bahagat* where it was held that the element of natural

justice was an inbuilt requirement of the standing orders.

24. In this case, the appellant Corporation had issued two notices calling upon the workmen represented by the respondent to return to duty. The workmen did not respond to either of the notices. As we have noted it was not pleaded that the advertisement did not sufficiently comply with the principles of natural justice. The notice was issued giving an opportunity to the respondent to show cause why the presumption should not be drawn under CSO L-2.12. The respondent did not show cause. In the circumstances, the management drew the presumption in terms of the CSO.””

20. It may be observed that in the present case, sufficient opportunity was granted by the respondent-PNB to the appellant to show cause why he should not be removed in accordance with Clause XVI. The action of the respondent-PNB cannot be held to be unfair and unreasonable and one which does not meet requirements of Article 14 of the Constitution of India. The principle of natural justice has been complied with.

21. In view of the aforesaid reasoning, we do not find any merit in the present Appeal and we agree with the findings recorded by the learned single Judge. Appeal is accordingly dismissed. No order as to costs.

(SANJIV KHANNA)
JUDGE

(DIPAK MISRA)
CHIEF JUSTICE

FEBRUARY 10, 2011.
P/VKR