

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

+ **RSA No.189/2010**

% **16th May, 2014**

IDBI BANK LIMITED & ANR. Appellants
Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. Sanjay Bhatt, Advocate.

Versus

SHRI ROSHAN LAL GUPTA Respondent
Through: Mr. G.D. Gupta, Senior Advocate
with Mr. Piyush Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Second Appeal is filed under Section 100 of Code of Civil Procedure, 1908 (CPC) impugning the judgment of the first appellate court dated 29.3.2010. The first appellate court by the impugned judgment accepted the appeal filed by the respondent/plaintiff against the judgment of the trial court dated 21.9.2002 by which the trial court had dismissed the suit

for declaration and mandatory injunction which was filed by the respondent/plaintiff.

2. Respondent/plaintiff had sought two reliefs in alternative in the suit. First relief was for direction to the appellants/employer to take back the respondent/plaintiff in service. The second relief in the alternative was that if the respondent/plaintiff is not to be taken in service, the respondent/plaintiff should be given benefit of IDBI Pension Regulations, 1993 because the respondent/plaintiff should be deemed to have retired from service after completing 20 years and it is not that his services should be treated to have been abandoned in terms of the order dated 12.7.1991 passed by the appellants/defendants/employer.

3. The facts of the case are that the respondent/plaintiff was an employee of the appellant no.1, having been employed on 19.12.1960. On 12.6.1990, the respondent/plaintiff was working as a Senior Officer-Grade A. Respondent/plaintiff was transferred, at this stage, to the head office of the appellants/defendants in Bombay. The respondent/plaintiff did not join at Bombay by giving one reason after another. Firstly, he made a representation against his transfer by his letter dated 18.6.1990, but the same was rejected. Thereafter, respondent/plaintiff informed that his wife was not well and therefore he could not join at Bombay. Thereafter, the third

reason which was given was that respondent/plaintiff himself was not well and since as per the medical condition he was advised bed rest, the respondent/plaintiff should not be directed to join at Bombay. The first application informing the illness of the respondent /plaintiff was supported by the certificate of the panel doctor dated 5.12.1990. The certificate attached with this application is of Dr. Sushma Chawla dated 5.12.1990 and which was exhibited as Ex.PW1/11. Respondent/plaintiff was said to be advised further bed rest for six weeks w.e.f 5.12.1990 i.e upto about 19.1.1991. Respondent/plaintiff accordingly gave an application supported by the medical certificate of the medical officer of Hindu Rao Hospital at Delhi (Ex.PW1/12) that respondent/plaintiff need not join duty for one month ie upto 16.2.1991. These two certificates Ex.PW1/11 and Ex.PW1/12 are not disputed by the appellants, and the disputes arose thereafter. Respondent/plaintiff for the period after 16.2.1991, filed before the trial court and relied upon his alleged letter dated 17.2.1991 seeking one month medical leave, but admittedly this letter was neither supported by a medical certificate and nor was this letter said to have been sent by UPC, proved before the trial court. This letter and the corresponding UPC have not been proved and exhibited before the trial court by the respondent/plaintiff and as conceded before me on behalf of the

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respondent/plaintiff. Further letters dated 12.4.1991 and 22.6.1991 sent by the respondent/plaintiff to the appellants were again not proved before the trial court and were in any case not supported by the requisite medical certificates of a panel doctor of the appellants inasmuch as the certificates are only of a private Gautam Hospital. The next letter given by the respondent/plaintiff is dated 10.7.1991 and which has been exhibited as Ex.PW1/15 and which is said to be accompanied by the certificate of Gautam Hospital dated 10.7.1991. The same has been exhibited as Ex.PW1/16. However, I note that there is no proof of receipt of these letters by the appellants and the appellants in their written statement have in fact denied having received any letter from the respondent/plaintiff after the respondent's/plaintiff's letter dated 17.1.1991. The appellants/defendants on account of failure of the respondent/plaintiff to join duties, passed the order dated 12.7.1991 (Ex.PW1/21) intimating the respondent/plaintiff that his services were deemed to have been abandoned as the respondent/plaintiff had not joined his duties. Respondent/plaintiff thereafter kept on corresponding with the appellants challenging the order dated 12.7.1991. Ultimately, the subject suit came to be filed on 5.8.1997.

4. The appellants/defendants in the written statement pleaded validity of the order dated 12.7.1991, Ex.PW1/21 by which it was intimated

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to the respondent/plaintiff that the respondent/plaintiff is deemed to have abandoned his services on account of his non-joining of services with the appellants.

5. Trial court framed the following issues in the present suit:-

- “1. Whether the suit of the plff is barred by law of limitation? OPD
2. Whether the suit is barred by acquiescence and estoppels? OPD
3. Whether the suit is without cause of action? OPD
4. Whether the present court has the territorial jurisdiction to entertain the suit? OPP
5. Whether the plff is entitled for the relief claimed? OPP
6. Relief.”

6. Trial court by its judgment dated 21.9.2002 held the issue of limitation against the respondent/plaintiff by holding that the limitation period was of three years to challenge the order dated 12.7.1991, but since the suit was filed on 5.8.1997 i.e well beyond three years, the same is time barred. Trial court also held that the respondent/plaintiff is not entitled to the benefit of the appellants' Pension Regulations, 1993 because the Regulations did not apply to employees who had not retired but whose services were held to be abandoned or whose services were terminated. It is held by the trial court that vacation of the post on account of abandonment is not retirement and consequently Pension Regulations cannot apply as

claimed by the respondent/plaintiff because it is only on retirement that an employee can claim benefit of the Pension Regulations.

7. The first appellate court has set aside the judgment of the trial court, and if I can say so, by giving a very cryptic and unacceptable reasoning.

8(i) So far as the issue of limitation is concerned, the appellate court has observed as under for holding the suit to be barred by limitation:-

“8. Issue No.1. Whether the suit of the plaintiff is barred by law of limitation? OPD:- The Ld. Trial court has held while deciding this issue that the suit was not within limitation and accordingly the suit was barred by his conduct and estoppels as plaintiff could not challenge the order under Ex.PW-2 was after a gap of 6 years when cause of action arose on 12.7.91. One has to see the para No.11 of the plaint wherein the cause of action has been shown to arise on 10.9.1994 when the letter dated 8.9.94 was received by plaintiff. Thereby subsequent representations were made and on 01.8.97 finally the defendant refused to exceed to the demand of plaintiff and the present suit was filed on 05.8.97. The letter is Ex.PW-1/26 and when the other remedies were closed for him, he had come to this court for the redressal of the grievances. Even otherwise, there is another letter dated 10.9.94 on record Ex.PW-1/18 and the suit was filed within three years of the same whereby the claim of the plaintiff was rejected. Whether the plaintiff is entitled to the pension or not is to be decided on merits but as far as the limitation is concerned that was to be seen from the date when his rights of approaching the court started. Hence in these circumstances the observations of Ld. Trial court are erroneous and cannot be stated that suit was beyond limitation. Hence, this issue is decided in favour of the plaintiff and against the defendant.”

(ii) So far as the entitlement of the respondent/plaintiff to the relief of entitlement to the benefits of Pension Regulations is concerned, the first appellate court has dealt with the same in para 10 of the impugned judgment and which reads as under:-

“10. Issue No. 5. Whether the plaintiff is entitled for the relief claimed?OPP:-

Issue No. 5 is taken up now. In this issue the observations of Ld. Trial court are manifest in para No. 9,10 and 11 of the judgment of Ld. Trial court and it came to conclusion that plaintiff was not retired by defendant. He himself did not opt for the retirement and plaintiff did not complete the 50 years of age on 12.7.91. Hence, plaintiff was deemed to have voluntarily vacated his post as per order dated 12.7.91 and Ex. PW-1/21. Hence Rule 21 was not applicable. The Ld. Trial court came to this conclusion on the basis of the impugned letter which is under challenge. The court had to decide independently whether the bank was justified or not and the version of the defendant as such could not have been accepted without any reason. The finding of Ld. Trial court that pension benefit could only be availed by employee who had retired before 01.11.93 is also erroneous. It is made out from the record that plaintiff himself has never resigned nor his services were terminated by any disciplinary authority and he opted for pension benefit by voluntarily retirement. One has to go to amended Sub-Rule 3 A of rule 21 of IDBI Staff Rules alongwith amended IDBI Pension Regulation of 1993 for interpretation. Rule 5 of amendment Rule is applicable to cases of voluntarily Retirement. The Ld. Trial court has already held that he was no retired by defendant and plaintiff deemed to have voluntarily vacated its post. If the plaintiff is deemed to have voluntarily vacated its post then it means that he had voluntarily retired himself and the said amendment was carried out for those persons who have not attained the age of 50 years but have completed qualified services of 20 years. As per the above provisions, the person who voluntarily retired after attaining the age of 50 years was duly covered under rule 21 of IDBI Staff Rules which existed before the amendment and this amendment was carried out for

the persons like plaintiff and who were otherwise not covered. The plaintiff had already completed the qualified services of 20 years and thus the case of the plaintiff was duly covered under the aforesaid amended provisions under interpretation. The Ld. Counsel for defendant could not satisfy to this court as to why the case of the plaintiff could not be considered in view of the above interpretation while issuing the letter Ex.PW-1/14. Thus in these circumstances the plaintiff has proved his case and has shown that he was entitled to the pension and finding of Ld. Trial court needs reversal. Accordingly, issue No. 5 is decided in favour of the plaintiff and against the defendant.”

9. For the purpose of this Second Appeal, the following substantial questions of law are framed:-

“1. Whether the first appellate court has committed a grave illegality and perversity in setting aside the findings of the trial court that the suit is barred by limitation inasmuch as an order holding abandonment of services which is dated 12.7.1991 could not be challenged after about six years on 5.8.1997?

2. Whether the first appellate court has committed a grave illegality and perversity in holding that the suit is not barred by time, the respondent/plaintiff has not abandoned his services, inasmuch as in law it is necessary (held otherwise by the first appellate court) that services have to be terminated by a disciplinary authority and the first appellate court could not have held that without an order of termination of services by a

disciplinary authority there is no valid cessation of services of the respondent/plaintiff?

3. Whether the first appellate court has committed grave illegality and perversity in failing to hold that in fact the appellants are deemed to have abandoned his services in view of the judgments of the Supreme Court in the cases of *Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. & Ors. (2005) 5 SCC 337* and *Punjab & Sind Bank & Ors. Vs. Sakattar Singh (2001) 1 SCC 214*?”

10(i) The substantial questions of law 2 and 3 have to be answered in favour of the appellants.

(ii) Question no.1 is partly answered in favour of the respondent/plaintiff, but, the same will still not be of any beneficial effect to the respondent no.1, because the suit still will be held to be barred by time as the order holding that the respondent/plaintiff has abandoned his services on 12.7.1991 is not null and void and as is sought to be urged by the respondent/plaintiff. Once the order dated 12.7.1991 is not null and void, then, the suit filed in the year 1998 to challenge the order passed in the year 1991, would be clearly time barred and as per discussion below.

11(i) Learned senior counsel for the respondent/plaintiff has placed reliance upon the Constitution Bench judgment of the Supreme Court in the *RSA 189/2010*

case of *State of Madhya Pradesh Vs. Syed Qamarali 1961 SLR 228* to argue that once the order of termination of services is null and void, the bar of limitation will not apply because there is no need to seek a declaration from the Court once the order itself is null and void.

(ii) In my opinion, even if we apply the ratio of the judgment of the Supreme Court in the case of *Syed Qamarali (supra)*, yet, the suit would be barred by time because the order passed by the appellants/employer against the respondent/plaintiff with respect to abandonment of services is not null and void as is sought to be contended on behalf of the respondent/plaintiff. I have had an occasion to examine this aspect as to requirement of following the principles of natural justice as regards the termination of service by an order of abandonment and as to whether the same can only be by passing an order by the disciplinary authority of the employer in the case of *Tilak Raj Mullick Vs. State Bank of India and Ors.* in W.P.(C) No.4886/1994 decided on 23.9.2013. In that case, it was also contended on behalf of the employee by placing reliance upon the Constitution Bench judgment of the Supreme Court in the case of *Jai Shanker Vs. State of Rajasthan AIR 1966 SC 492 (V 53 C 101)* that services of an employee cannot be terminated without following the principles of natural justice. The contention of the employee was rejected by this Court by applying the ratio of the judgments *RSA 189/2010*

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of the Supreme Court in the cases of *Viveka Nand Sethi (supra)* and *Sakattar Singh (supra)*. The relevant paras of the judgment of this Court in the case of *Tilak Raj Mullick (supra)* are paras 2 to 11 and the same read as under:-

“2. The case as set up in the writ petition is that petitioner had taken leave to visit his ailing mother in New York where he met with an accident and consequently petitioner applied for extension of leave by his application dated 21.1.1985. The respondent no.1-bank allowed permissible leave but since the petitioner did not thereafter re-join, the bank wrote a letter dated 19.4.1985 to the petitioner that since all leaves of the petitioner were exhausted the petitioner should therefore report for duty within 7 days from the date of receipt of the letter otherwise it shall be presumed that petitioner had vacated the job voluntarily. On receiving this letter, petitioner by his letter dated 29.6.1985 sought voluntary retirement from the bank. Petitioner claimed medical grounds for seeking voluntary retirement. Respondent no.1-bank by its letter dated 6.3.1986 informed the petitioner for arranging of medical check-up as per his request seeking voluntary retirement on medical grounds, and to which petitioner responded to by his letter dated 18.3.1986 suggesting the dates in April, 1986 as being available for the medical check up. Petitioner pleads that in spite of agreeing for medical examination, respondent no.1-bank however did not undertake the medical examination of the petitioner. Petitioner then after about 4 ½ years wrote to the respondent no.1-bank on 15.7.1990 that he had recovered from his illness and therefore he wanted to re-join his service with the bank. On this request being made by the petitioner, the respondent no.1-bank informed him that he is deemed to have vacated the job voluntarily on 19.4.1985. Subsequent correspondence was thereafter entered into, however, the crux of the matter which has resulted is the issue between the parties as argued before me that whether petitioner is deemed to have voluntarily vacated his job w.e.f 19.4.1985 as contended by the respondent no.1-bank.

3. On behalf of the petitioner reliance is placed upon the Constitution Bench judgment of the Supreme Court in the case of *Jai Shanker Vs. State of Rajasthan AIR 1966 SC 492 (V 53 C 101)* to argue the proposition that even if a person overstays his leave there is no automatic termination of services and such termination from services without following the principles of natural justice is illegal. Paras 4 to 7 of this judgment are relied upon and they read as under:-

4. The short question in this appeal is whether Jai Shanker was entitled to an opportunity to show cause against the proposed punishment as required by Clause (2) of Art, 311. It is admitted that no charge was framed against him. Nor was he given any opportunity of showing cause. The case for the State Government is that Government did not terminate Jai Shanker's service, and that it was Jai Shanker who gave up the employment by remaining absent. It is submitted that such a case is not covered by Art. 311. In support of this contention certain Regulations of the Jodhpur Service Regulations are relied upon and we shall now refer to them. Regulation 7 lays down that leave cannot be claimed as a right and that Government has discretion to refuse or revoke leave of any description. Regulation 11 lays down that an individual who has been granted leave on medical grounds for a period of one month or more may not return to duty without producing a certificate of fitness signed by an officer authorised by a general or special order to grant such certificate. Regulation 12 lays down that an individual who absents himself without permission or remains absent at the end of his leave is entitled to no salary for the period of such absence and that period will be debited against his leave account unless the leave is sanctioned or extended under the ordinary rules by competent authority. Regulation 13 is important because it forms the basis of the contention that Art. 311 does not apply to this case. That Regulation may be reproduced here :

"13. An individual who absents himself without permission or who remains absent without permission for one month or longer after the end of his leave should be considered to have sacrificed his appointment and may only be reinstated with the sanction of the competent authority.

Note :- The submission of an application for extension of leave already granted does not entitle an individual a absent himself without permission."

5. It is contended that this regulation operated automatically and no question or removal from service could arise, because Jai Shankar must be considered to have sacrificed his appointment. Under the regulation his he could only be reinstated with the sanction of the competent authority. We have therefore, to determine whether this regulation is sufficient to enable the Govt. to remove a

person from service without giving him an opportunity of showing cause against that punishment, if any.

6. It is admitted on behalf of the State Government that discharge from service of an incumbent by way of punishment amounts to removal from service. It is, however, contended that under the Regulation all that Government does, is not to allow the person to be reinstated. Government does not order his removal because the incumbent himself gives up the employment. We do not think that the constitutional protection can be taken away in this manner by a side wind. While, on the one hand, there is no compulsion on the part of the Government to retain a person in service if he is unfit and deserves dismissal or removal, on the other, a person is entitled to continue in service if he wants until his service is terminated in accordance with law. One circumstance deserving removal may be over-staying one's leave. This is a fault which may entitle Government in a suitable case to consider a man as unfit to continue in service. But even if a regulation is made, it is necessary that Government should give the person an opportunity of showing cause why he should not be removed. During the hearing of this case we questioned the Advocate General what would happen if a person owing to reasons wholly beyond his control or for which he was in no way responsible or blameable, was unable to return to duty for over a month, and if later on he wished to join as soon as the said reasons disappeared? Would in such a case Government remove him without any hearing, relying on the regulation ? The learned Advocate General said that the question would not be one of removal but of reinstatement and Government might reinstate him. We cannot accept this as a sufficient answer. The Regulation, no doubt, speaks of reinstatement but it really comes to this that a person would not be reinstated if he is ordered to be discharged or removed from service. The question of reinstatement can only be considered if it is first considered whether the person should be removed or discharged from service. Whichever way one looks at the matter, the order of the Government involves a termination of the service when the incumbent is willing to serve. The Regulation involves a punishment for overstaying one's leave and the burden is thrown on the incumbent to secure reinstatement by showing cause. It is true that the Government may visit the punishment of discharge or removal from service on a person who has absented himself by over-staying his leave, but we do not think that Government can order a person to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of showing cause why he should not be removed. If this is done the incumbent will be entitled to move against the punishment for, if his plea succeeds, he will not be removed and no question of reinstatement will arise. It may be convenient to describe him as seeking reinstatement but this is not tantamount to saying that because the person will only be reinstated by an appropriate authority, that the removal is automatic and outside the protection of Art. 311. A removal is removal and if it is

punishment for over-staying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it. To give no opportunity is to go against Art. [311](#) and this is what has happened here.

7. In our judgment, Jai Shankar was entitled to an opportunity to show cause against the proposed his leave and as no such opportunity was given to him removal from service was illegal. He is entitled to this declaration. The order of the High Court must therefore, be sent aside and that of the District Judge, Jodhpur restored. The question of what back salary is due to Jai Shankar must now be determined by the trial Judge in accordance with the rules applicable, for which purpose there shall be a remit of this case to the Civil Judge, Jodhpur.

(underlined portions stressed by petitioner)

4. It is contended on behalf of the petitioner that in the case of ***Jai Shanker (supra)*** the rule in question was similar to the Rule 92 which is relied upon by the respondent no.1-bank in the present case. It is argued that the Constitution Bench in the case of ***Jai Shanker (supra)*** has clearly held that the constitutional protection against removal from service without following the principles of natural justice cannot be taken away. It is also argued that in para 6 the Supreme Court has said that even if there is a rule to remove an employee without following the principles of natural justice yet such employee should not be removed without following the principles of natural justice.

5. Reliance on behalf of the petitioner is also placed upon the judgment of the Supreme Court in the case of ***Upton India Limited Vs. Shammi Bhan & Anr. 1998 III AD (S.C) 528*** that even if there are standing orders of a company for automatic termination of services, such an order is void and unconstitutional and service of a worker under the Industrial Disputes Act cannot be terminated without following the principles of natural justice. Similar observations of the Supreme Court in the case of ***D.K.Yadav Vs. J.M.A.Industries Ltd. (1993) 3 SCC 259*** are also relied upon.

6. On behalf of respondent no.1-bank it is argued that as per Rule 20 of the State Bank of India (Supervising Staff) Service Rules, before an employee such as the petitioner could claim

voluntary retirement on medical grounds he should have completed 25 years of service with the bank and which 25 years of service the petitioner had not completed because the petitioner's application was dated 29.6.1985 and the 25 years period had not been completed by then as petitioner had joined the bank on 9.2.1961 and the 25 years period would be complete only as on 8.2.1986. It is also argued that in terms of Rule 92 there is forfeiture of appointment when a person remains absent without leave and which took place on the respondent-bank giving the notice dated 19.4.1985 to the petitioner. Rule 20 with its second and third provisos and Rule 92 are reproduced hereunder:-

“Rule 20. An employee shall retire from the service of the Bank on attaining the age of fifty-eight years or upon the completion of thirty years' pensionable service whichever occurs first.

Xxxx

xxxx

xxxx

xxxx

Provided further that an employee may, at the discretion of the Executive Committee, be retired from Bank's service after he has attained 50 years of age or has completed 25 years' pensionable service by giving him three months' notice in writing or pay in lieu thereof.

Provided further that an employee who has completed 25 years pensionable service maybe permitted by the Executive Committee to retire from the Bank's service, subject to his giving three months' notice in writing or pay in lieu thereof unless this requirement is wholly or partly waived.

Rule 92. An employee who overstays his leave, except in circumstances beyond his control, shall not be entitled to any salary or allowance fro the period of his absence without leave and shall also be liable to forfeiture of his appointment or to any of the penalties specified in rule 49.”

7. The aforesaid Rule 92 is sought to be buttressed by referring to the judgment of the Supreme Court in the case of

Syndicate Bank Vs. General Secretary, Syndicate Bank Staff Association and Anr. (2000) 5 SCC 65 which holds that once an employee is asked to join back his services and he does not do so, then thereafter, there is deemed abandonment of his services and no further requirement exists for following the principles of natural justice of conducting a detailed enquiry. Paras 17 and 18 of the judgment which are relied upon on behalf of respondent no.1 read as under:-

“17. It is no point laying stress on the principles of natural justice without understanding their scope or real meaning. There are two essential elements of natural justice which are: (a) no man shall be judge in his own cause; and (b) no man shall be condemned, either civilly or criminally, without being afforded an opportunity of being heard in answer to the charge made against him. In course of time by various judicial pronouncements these two principles of natural justice have been expanded, e.g., a party must have due notice when the Tribunal will proceed; Tribunal should not act on irrelevant evidence or shut out relevant evidence; if the Tribunal consists of several members they all must sit together at all times; Tribunal should act independently and should not be biased against any party; its action should be based on good faith and order and should act in just, fair and reasonable manner. These in fact are the extensions or refinements of the main principles of natural justice stated above.

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 Avas 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.” (underlining added)

8. On behalf of respondent no.1, reliance is also placed upon the judgment of the Supreme Court *Viveka Nand Sethi Vs. Chairman, J& K Bank Ltd. and Ors. (2005) 5 SCC 337* to contend that merely by regularly sending applications for leave on medical grounds, the same will not entitle a person to claim that he has valid ground to stay away from duty and that in such a case a bank is fully entitled to take a decision that the employee had abandoned his services and in such a case there is no further requirement of conducting the detailed enquiry and giving of a notice to join is sufficient compliance of the principles of natural justice when the employee fails to re-join and does not have/give valid justification for the entire period of absence from duty. The observations in this judgment are relied upon which show that as per the Bipartite Settlement entered into between the management of 58 banks with their workmen, there can be a voluntary cessation of employment of an employee i.e of deemed abandonment of service by an employee. It is argued on the basis of the observations of the Supreme Court in this judgment that application of principles of natural justice is case specific and the principle is no unruly horse. It is also argued the long period of absence of the petitioner of about 4 ½ years without valid reasons including of not furnishing any medical certificate after April, 1986 till he sought to claim entitlement to re-join in July, 1990 is enough for the respondent no.1-bank to arrive at a decision that there was no valid justification for the petitioner not to join pursuant to the notice dated 19.4.1985. Paras 15, 18, 22, 23, 24, and 25 of the said judgment are relied upon and the same read as under:-

“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, 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 has no intention of not joining his duties.

18. Mere sending of an application for grant of leave much after the period of leave was over as also the date of resuming duties cannot be said to be a bona fide act on the part of the workman. The Bank, as noticed hereinbefore, in response to the lawyer's notice categorically stated that the workman had been carrying on some business elsewhere.

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 Grewal (Dr.) v. Dr. Sumitra Dash* (2004) 5 SCC 263: 2004 SCC (L&S) 747.] 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* (2004) 8 SCC 129: 2004 SCC (L&S) 1109 and *Karnataka SRTC v. S.G.Kotturappa* (2005) 3 SCC 409 : (2005) 2 Scale 493.

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* (supra) 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."

24. The aforementioned legal position was reaffirmed by a decision of three-Judge Bench in Punjab & Sind Bank(supra), wherein it has been held :

"Under this rule the employee is given an opportunity to rejoin duty within a stipulated time or explain his position to the satisfaction of the management that he has no intention of not joining duty, and a presumption will be drawn that the

employee does not require the job anymore and will stand retired from service. Thus, there is no punishment for misconduct but only to notice the realities of the situation resulting from long absence of an employee from work with no satisfactory explanation thereto...".

In the fact situation obtaining therein it was held that there had been sufficient compliance for principle of natural justice.

25. In Syndicate Bank (supra), this Court noticed the decision of three- Judge Bench of this Court in D.K. Yadav v. J.M.A. Industries Ltd.: (1993)IILLJ696SC whereupon the Industrial Tribunal had placed strong reliance. In D.K. Yadav (supra) admittedly no opportunity was given to the workman and no inquiry was held. In that situation, it was observed :

"8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person." (underlining added)

9. Reliance is then placed upon by the respondent no.1-bank on the judgment of the Supreme Court in the case of ***Punjab & Sind Bank and Ors. Vs. Sakattar Singh (2001) 1 SCC 214*** to argue that there is no punishment of removal when a bank forfeits the services of an employee remaining absent from duty, and it is enough for compliance of the principles of natural justice that the employee is issued a notice to join services and which was done in this case by the notice of the respondent no.1 dated 19.4.1985. Para 4 of the said judgment is relied upon and the same reads as under:-

“4. A reading of clause XVI of IV Bipartite Settlement will make it clear that in the event an employee absents himself from duty for 90 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended the Management may, at any time thereafter, give a notice to the employee at the last known address calling upon him to report for duty within 30 days of notice stating, inter alia, the grounds for the Management coming to the conclusion that the employee has no intention of joining duty and furnishing necessary evidence wherever relevant and unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence satisfying the Management that he has not taken up another employment or avocation and he has no intention of not joining the duty, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the time fixed in the said notice in the event of the employee giving a satisfactory reply, he will be permitted to report for duty thereafter within 30 days from the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service. Under this Rule the employee is given an opportunity to rejoin duty within a stipulated time or explain his position to the satisfaction of the Management that he has no intention of not joining duty, and a presumption will be drawn that the employee does not require the job any more and will stand retired from service. Thus, there is no punishment for mis-conduct but only to notice the realities of the situation resulting from long absence of an employee from work with no satisfactory explanation thereto. The principles of natural justice cannot be examined in vacuum without reference to the fact-situation arising in the case. This Rule has been incorporated in an agreement where representatives of employees' unions were party. They also realised the futility of continuing a situation when an employee without appropriate intimation to the management is playing truant.” (underlining added)

10. I may note that the Supreme Court in the judgments in the cases of *Viveka Nand Sethi (supra)* and *Punjab & Sind Bank (supra)* has relied upon the earlier judgment in the case of *Syndicate Bank (supra)* and has further expounded the

ratio of *Syndicate Bank (supra)* by holding that principles of natural justice cannot be examined in vacuum without reference to the fact/situation arising of each case and that there is no need of holding enquiry once admitted fact appears on record that the employee failed to join the services of the bank without valid reasons. I also note that in the judgments of the Supreme Court relied upon by the respondent no.1-bank the cases of *Uptron India Limited (supra)* and *D.K. Yadav (supra)* relied upon by the petitioner are quoted and distinguished.

11. To the aspect that an employee of an instrumentality of State cannot be removed from services without following the principles of natural justice there cannot be any dispute, however, the Supreme Court has repeatedly held that principles of natural justice are not inflexible hidebound rules. Supreme Court has repeatedly clarified that application of principles of natural justice are case and facts specific. There can be no quarrel to the proposition of law laid down by the Supreme Court in the case of *Jai Shanker (supra)* relied upon by the petitioner, however we have to see whether in the facts of the present case what should be the principles of natural justice which have to be followed and whether they have been followed. It bears reiteration that Supreme Court in the judgments relied upon by the respondent no.1 has held that once admitted facts emerge which show that there was no basis for the employee to not join the services of the bank, no purpose is served by conducting a detailed enquiry because facts are more or less admitted.”

12. In the present case, respondent/plaintiff was unauthorizedly absent from duty from around 17.1.1991. Respondent/plaintiff did not join services in spite of the appellants/defendants issuing to him the letter dated 8.2.1991, Ex.PW1/20. In my opinion the respondent/plaintiff has failed to show entitlement to remain on leave from 17.1.1991, inasmuch as his subsequent applications have not been proved before the trial court because

not only the two of the applications were not accompanied by the requisite medical certificates but also that they were allegedly only sent by UPC. As already stated above the appellants have categorically denied receipt of these documents in its written-statement. Even if we consider the last application of the respondent/plaintiff to the appellants dated 10.7.1991 (Ex.PW1/15), it is found that though application is only supported by a certificate of a private hospital dated 10.7.1991 (Ex.PW1/16) and there is no medical certificate as required of the panel doctor or a panel hospital of the appellants/employer. Therefore, the respondent/plaintiff deliberately did not join his duties, and which was obviously for the reason that he did not want to accept his transfer to Bombay and therefore the appellants/defendants were justified in passing the order of abandonment of services dated 12.7.1991.

13. No employer can function if employees behave in a recalcitrant manner and refuse to join the place of posting. Employees cannot choose their place of posting because the employer knows where and how best the services of the employee are to be utilized. If employees are allowed to defy the employer's order of transfer, no organization would be able to function. Therefore, I find no illegality in the order dated 12.7.1991 passed by the appellants/employer in view of the judgments of the Supreme Court in the cases of *Viveka Nand Sethi (supra)* and *Sakattar Singh (supra)* taken with *RSA 189/2010*

the specific fact that even the appellant no.1 is a public sector bank as was in the cases of *Viveka Nand Sethi (supra)* and *Sakattar Singh (supra)*. Once, it is held that the order of abandonment of services dated 12.7.1991 is valid there does not arise an issue of the respondent/plaintiff taking benefit of the Pension Regulations inasmuch as it cannot be disputed that the Pension Regulations cannot apply if the employee's services stood already terminated either on account of passing of an order of termination of services or the employer passing an order of abandonment of services of an employee.

14. I have had an occasion to examine the aspect as to whether subsequently framed Pension Regulations operate with respect to employees who have resigned earlier i.e who have not ordinarily retired or not taken voluntary retirement, and as to whether such an employee who has resigned can still take benefits of the Pension Regulations which operate prospectively, in the judgment in the case of *Anand Parkash Batra Vs. Central Bank of India* in W.P.(C) No.5698/1998 decided on 30.9.2013. In this judgment, I have expressed an angst that employees who have completed the requisite pensionary years of service, such persons should be given pension by treating their cessation of services as voluntary retirement, however, pension could not be granted in view of the direct judgment of the *RSA 189/2010*

Supreme Court in the case of ***M.R. Prabhakar & Ors. Vs. Canara Bank and Ors. (2012) 9 SCC 671***. This judgment in the case of ***Anand Parkash Batra (supra)*** reads as under:-

“1. The issue to be decided in the present writ petition is the claim of the petitioner to pensionary benefits in accordance with the 1995 Pension Scheme of the respondent-bank. Respondent denies entitlement of the petitioner to the 1995 Pension Scheme on the ground that the scheme will not apply as per para 22 of the 1995 Pension Scheme when a person has resigned from service as distinguished from having voluntarily retired.

2. Before this Court two judgments of the Supreme Court are cited. First is the judgment of Supreme Court in the case of ***Sheel Kumar Jain Vs. New India Assurance Company Limited & Ors. (2011) 12 SCC 197*** on behalf of the petitioner, and the second is the judgment in the case of ***M.R.Prabhakar and ors VS. Canara Bank and ors (2012) 9 SCC 671*** on behalf of the respondent-bank.

3. The ratio of the judgment in the case of ***Sheel Kumar (supra)*** shows that a Division Bench of two judges of the Supreme Court held that if an employee is not expected to know that in spite of serving a qualifying service period which would entitle grant of pension under a subsequent implemented pension scheme (which operates from a retrospective date) his resignation will lead to forfeiture of services, then, once an employee has otherwise completed the requisite period of qualifying service for grant of pension under the retrospectively operating pension scheme, the language of a resignation letter should not be treated as one seeking a resignation by the employee, but that letter should be treated as an application for voluntary retirement.

4. It is clear that in ***Sheel Kumar's case (supra)*** a Division Bench of the Supreme Court took an equitable view because a person is not expected to know the adverse consequences against him unless so provided by the relevant rules and especially when benefits of pension scheme is given retrospectively whereby qualifying service completes many years earlier/ prior to the introduction of the pension

scheme (i.e in the retrospective period) and in which period there would be persons who had 'resigned' but who on the date of resignation had otherwise completed the qualifying service period for grant of pension.

5. I must concede that my heart really is in accordance with the ratio in the case of *Sheel Kumar's case (supra)*. This is all the more so because in the counter-affidavit filed by the respondent-bank there is no reference to the earlier service rules of the respondent-bank that in such service rules prior to application of the 1995 Pension Scheme a distinction was in fact drawn between resignation and voluntary retirement. However, I am bound by the ratio in the case of *M.R.Prabhakar's case (supra)* which distinguishes the judgment in *Sheel Kumar's case (supra)* on the ground that the judgment in *Sheel Kumar's case (supra)* dealt with the pension schemes of insurance companies and not the pension schemes of the banks, and that as per para 22 of the 1995 Pension Scheme of the Banks if a person had resigned there results forfeiture of his services and such a person is not entitled to benefits of 1995 Pension Scheme.

6(i) I must state that it is a moot point for consideration at an appropriate time by the Supreme Court that if a scheme operates retrospectively i.e it commences at a date for its implementation many years prior to the same being introduced, then surely an adverse consequence of denial of benefits of such retrospectively operating scheme should not be denied to an employee whose services come to an end in the retrospective period unless such employee was made aware of the adverse consequences. In this regard it bears note that it is held by the Supreme Court in a catena of judgments that terminal benefits are not a bounty but are natural entitlements which become due to an employee for the services rendered by the employee with the employer-organization. Therefore, once the necessary qualifying service period has been completed by the employee, terminal benefits should be granted as a matter of course because they flow from the aspect of rendering continuous service with the bank for the qualifying period and they be not denied on the technical ground that the employee had 'resigned'.

(ii) A most important aspect for giving benefit of pension scheme is noted and stated by the Supreme Court in the case of **UCO Bank Vs. Sanuwar Mal (2004) 4 SCC 412**, as “The pension scheme herein is based on actuarial calculation; it is a self financing scheme, which does not depend budgetary support and consequently it constitutes a complete code by itself. The scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service.” Thus, clearly there is a valid reason to treat resignation as retirement qua those employees who have at the time of resignation rendered the requisite qualifying service for grant of pension and they ought to be treated differently for being entitled to grant of pension under the scheme than those persons who on resignation have not completed the period of qualifying service inasmuch as the employee who renders the qualifying service has that much credit to his provident fund by which no budgetary support is required for payment of pension.

7. Coming now to the facts of the present case, the admitted fact is that petitioner had resigned in terms of the letter dated 6.4.1989, and that resignation was accepted in terms of the letter dated 1.10.1993. Therefore, the ratio in the case of **M.R.Prabhakar (supra)** will apply whereby as per para 22 of the 1995 pension scheme of the respondent, persons who resigned from the bank will not be entitled to seek VRS benefits under the 1995 scheme. The relevant paras of the judgment of the Supreme Court in the case of **M.R.Prabhakar (supra)** are paras 11, 13 to 19 are relevant and they read as under:-.

11. Regulation 22, which finds a place in Chapter IV of the Regulations, reads as follows:

22 Forfeiture of service -(1). Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits;

(2) An interruption in the service of a Bank employee entails forfeiture of his past service, except in the following cases, namely:

(a) authorised leave of absence;

(b) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the bank employee dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension;

(c) transfer to non-qualifying service in an establishment under the control of the Government or Bank if such transfer has been ordered by a competent authority in the public interest;

(d) joining time while on transfer from one post to another.

(3) Notwithstanding anything contained in Sub-Regulation (2), the appointing authority may, by order, commute retrospectively the periods of absence without leave as extraordinary leave.

(4) (a) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered by a bank employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service;

(b) Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or Removal from the service or for participation in a strike:

Provided that before making an entry in the service record of the Bank employee regarding forfeiture of past service because of his participation in strike, an opportunity of representation may be given to such bank employees.

13. In order to appreciate the scope of the above mentioned Regulations, it is necessary to refer to some of the definition clauses. The word 'retire' is defined in Regulation 2(x) of the Regulations 1995, which reads as under:

“2(x) "retired" includes deemed to have retired under Clause(l)”.

The word 'retirement' is defined under Regulation 2(y) of the Regulations 1995, which reads as follows:

“2(y) "retirement" means cessation from bank's service,-

(a) On attaining the age of superannuation specified in Service Regulations or Settlements;

(b) On voluntary retirement in accordance with provisions contained in Regulation 29 of these Regulations;

(c) On premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlement.”

(emphasis supplied)

14. The Appellants, in our view, did not retire from the service, but resigned from the service. Appellants tried to build up a case that in the absence of a legal definition of 'voluntary retirement' or in the absence of legally prescribed consequences of 'resignation', it must be understood in the sense of voluntary relinquishment of service. It was pointed out that there can be no distinction between 'voluntary retirement' and 'resignation' and those expressions are to be understood in their ordinary literal sense.

15. We find it difficult to accept the contentions raised by the Appellants. There is no ambiguity in the definition clause under Regulation 2(y) which has statutorily brought in the 'voluntarily retirement' as 'retirement'. Though the concept of 'resignation' is well known in Service Jurisprudence, the same has not been brought within the definition of 'retirement' under Regulation 2(y). Further, the words 'retired' and 'retirement' have some resemblance in their meanings, but not 'resignation'. Regulation 3(1)(a) specifically used the expression 'retirement' and the expression 'resignation' has not been incorporated either in the definition clause or in Regulation 3(1) (a). We need not labour much on this issue, since the difference between these two concepts 'resignation' and 'retirement', in the context of the same Banking Regulations 1995, came up for consideration before this Court in *Sanwar Mal* (supra), wherein this Court has distinguished the words 'resignation' and 'retirement' and held as follows:

“9. ... The words "resignation" and "retirement" carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is severance of employment but in service jurisprudence both the expressions are understood differently. Under the Regulations, the expressions "resignation" and "retirement" have been employed for different purpose and carry different meanings. The pension scheme herein is based on

actuarial calculation; it is a self-financing scheme, which does not depend upon budgetary support and consequently it constitutes a complete code by itself. The scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. *Moreover, resignation brings about complete cessation of master and servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service-Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of Regulations/rules framed by the bank-Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits.*”

(emphasis added)

16. In the above mentioned judgment, this Court has also held that there are different yardsticks and criteria for submitting the resignation, vis-à-vis voluntary retirement and exceptions thereof. In that context, the scope of Regulation 22 of Regulations 1995 was also considered and the Court held as follows:

“9. ... In our view, Regulation 22 provides for disqualification of employees who have resigned from service and for those who have been dismissed or removed from service. Hence, we do not find any merit in the arguments advanced on behalf of the Respondent that Regulation 22 makes an arbitrary and unreasonable classification repugnant to Article [14](#) of the Constitution by keeping out such class of employees. The view we have taken is supported by the judgment of this Court in the case of Reserve Bank of India v. Cecil Dennis Solomon (2004) 9 SCC 461. Before concluding we may state that Clause 22 is not in the nature of penalty as alleged. It only disentitles an employee who has resigned from service from becoming a member of the Fund. Such employees have received their retiral benefits earlier. The pension scheme, as stated above, only provides for a second retiral benefit. Hence there is no question of penalty being imposed on such employees as alleged. The pension scheme only provides for an avenue for investment to retirees. They are provided avenue to put in their savings and as a term or condition which is more in the nature of an eligibility criteria the scheme disentitles such category of employees out of it.”

17. We may indicate that in *Sanwar Mal (supra)*, the employee, who was working on Class III post, resigned from the service of UCO Bank on 25.2.1988 after giving one month's notice and also accepted his provident fund without protest. On coming into force of the Regulations 1995, Sanwar Mal opted for pension scheme. Since Sanwar Mal had resigned in the year 1988, UCO Bank declined its option for admitting him as a member of the fund. This Court, as already indicated, after referring to the various provisions of the Regulations 1995 and after examining the meaning of the expressions 'resignation' and 'retirement', held that since Regulation 22 provided for disqualification of employees who had resigned, such employees could not claim membership of the fund.

18. Learned Counsel appearing for the Appellants have placed heavy reliance on *Sheelkumar Jain (supra)* and submitted that in the light of that judgment, the decision rendered in *Sanwar Mal (supra)* requires reconsideration. We find it difficult to accept the contention raised by the Learned Counsel appearing for the Appellants.

19. We may point out in *Sheelkumar Jain (supra)* that this Court was dealing with an insurance scheme and not the pension scheme, which is applicable in the banking sector. The provisions of both the scheme and the Regulation are not *pari materia*. In *Sheelkumar Jain case (supra)*, while referring to Para 5, this Court came to the conclusion that the same does not make distinction between 'resignation' and 'voluntary retirement' and it only provides that an employee who wants to leave or discontinue his service amounts to 'resignation' or 'voluntary retirement'. Whereas, Regulation 20(2) of the Canara Bank (Officers) Service Regulations 1979 applicable to banks, had specifically referred to the words 'resignation', unlike Para 5 of the Insurance Rules. Further, it is also to be noted that, in that judgment, this Court in Para 30 held that the Court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement.”

8. In view of the categorical ratio of the judgment in the case of *M.R.Prabhakar (supra)*, and with which I am bound, the writ petition is dismissed, leaving parties to bear their own costs.”

15. Accordingly, till the judgment in the case of *M.R. Prabhakar & Ors (supra)* holds the field, I have no option but to follow the same, and therefore once it is held that the respondent's/plaintiff's services were terminated on account of his having abandoned his services, the Pension Regulations in question cannot apply, and which only apply in the cases of ordinary retirement or premised voluntary retirement.

16. Learned senior counsel for the respondent-plaintiff placed reliance upon the two judgments in support of the arguments of the respondent-plaintiff. The first judgment is the judgment in the case of *Union of India & Anr. Vs. Shardinu (2007) 6 SCC 276*, and which was relied upon for the proposition that termination of appointment can only be made in the manner provided by the statute and not in any other way. Para 20 of this judgment was relied upon and which read as under:-

“20. As against this, learned senior counsel for the respondent, Mr.Gupta has strenuously urged before us that in case of statutory appointment there is no scope to cut short except to terminate the services of the incumbent in the manner provided under the Act. In this connection, our attention was invited to a decision of this Court in Sukhdev Singh and Ors. v. Bhagatram Sardar Singh Raghuvanshi and Anr. etc. (1975) I SCC 421 wherein the Constitution Bench held that the termination of service of an incumbent by the Corporation created by statute without complying with the regulations framed by the Corporation cannot be made. The reason was that the termination contravened the provisions contained in the Regulations. In short, when the appointment is made, the service conditions are laid down. The termination of such appointment could only be made in the

manner provided in the statute and by no other way. Once the regulations have been framed and detailed procedure laid down therein, then in that case if the services of an incumbent are required to be terminated then that can only be done in the manner provided and none else. Similar view has been taken in the case of State of Kerala v. Mathai Verghese and Ors. Therefore, in this background, we are of opinion that the submission of learned Additional Solicitor General cannot be sustained.”

17. The second judgment which is relied upon is the judgment in the case of *State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.* Civil Appeal No. 6770/2013, decided on 14.8.2013 and which is relied upon for the proposition that in the absence of rule, there cannot be any entitlement of an employer to withhold the pensionary benefits especially because of Article 300 A of the Constitution of India. It is also argued relying upon this judgment that a person cannot be deprived of pension in the absence of any rule.

18. In my opinion, the judgment in the case of *Shardindu's case* (supra) cannot apply to the facts of the present case inasmuch as, once there are no rules of the appellant with respect to passing an order of abandonment of services, surely on applying of the principles of natural justice an order can be passed for holding abandonment of services inasmuch as there is inherent right in every employer to pass an order of abandonment of

services. It is incorrect to argue that there must exist a rule with respect to passing of an order of abandonment of services and on the contrary such a right inheres with employer and actually it is only the employee to show existence of a rule that there cannot be an abandonment of services without an order of the disciplinary authority. Employees of banks are bound by the Bi-Party Settlement and which provides for passing of an order of abandonment of services as held by the Supreme Court in the cases of *Viveka Nand Sethi (supra)* and *Sakattar Singh (supra)*. In the case of *Shardindu's case (supra)* the Supreme Court was concerned with the specific statutory rules of the Union of India and it is in that context observations were made that without following the statutory rules, termination cannot be made of the services of the employees. In the present case, appellant is not governed by any statutory rules but by Bi-Party Settlements, and therefore, there does not arise the question of application of the ratio of the judgment in the case of *Shardindu's case (supra)* which is distinguishable as per the facts of the present case.

19. Reliance placed upon the judgment in the case of *State of Jharkhand (supra)* relied by the respondent/plaintiff again is misplaced because the judgment in the case of *State of Jharkhand (supra)* was as

regards the situation that during pendency of departmental proceedings pension was withheld although there was no rule entitling the employer to withhold pension during the pendency of the departmental proceedings. Supreme court has therefore held that after passing of the order of disciplinary authority, orders can be passed for withholding or adjustment of pension, but, during the pendency of the departmental proceedings, no order of withholding pension could be passed in the absence of any such rule of the employer and for which purpose Supreme Court took aid of Article 300A of the Constitution of India that no one can be deprived of his property except by the authority of law. Once there is no such authority of law/ rule of the employer organization, then the pensionary benefits cannot be withheld during the pendency of proceedings before the disciplinary authority/departmental authority even though there is no order holding that the employee is guilty for entitling the employer to withhold pension. Therefore, the judgment in the case of State of *Jharkhand (supra)* has no application in the facts of the present case.

20. In view of the above, appeal is allowed with costs of Rs.75,000/- noting that both the sides have been represented by Senior Advocates on various dates of hearing in this Court. Impugned judgment of the first

appellate court dated 29.3.2010 is set aside. The judgment of the trial court dated 21.9.2002 is upheld including for the additional reasons given above and hence the suit of the respondent/plaintiff would stand dismissed.

MAY 16, 2014
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VALMIKI J. MEHTA, J.