

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

+ **RSA Nos.234/2013 & 161/2013**

% **21st April, 2014**

1. **RSA No.234/2013**

RAJAN MALHOTRA Appellant

Through: Mr. Arjun Krishnan, Advocate.

Versus

ALLAHABAD BANK Respondent

Through: Mr. Rajesh Gautam, Advocate with
Ms. Arpita Seth, Advocate.

2. **RSA No.161/2013**

ALLAHABAD BANK Appellant

Through: Mr. Rajesh Gautam, Advocate with
Ms. Arpita Seth, Advocate.

Versus

RAJAN MALHOTRA Respondent

Through: Mr. Arjun Krishnan, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RSA No.161/2013 and C.M. No.12404/2013 (stay)

1(i) This Second Appeal is filed by the appellant-bank
impugning the judgment of the first appellate court dated 27.5.2013 by

which the first appellate court partly allowed the appeal against the judgment of the trial court dated 1.12.2005. The trial court by its judgment dated 1.12.2005 while directing re-appointment of the respondent/plaintiff directed the appellant-bank to consider the case of the plaintiff for promotion in accordance with the service rules and also granted all arrears of salary from 15.4.1993 till passing of the judgment by the trial court. The first appellate court passed the following modification in the judgment of the trial court:-

“33. The appeal is therefore partly allowed by modifying the impugned judgment and decree thereby directing as under:-

(i). The appellant is directed to appoint the respondent and give the place of posting to the respondent and he would be entitled to be considered for notional promotion and during the remaining service he shall be entitled to the remuneration of the post which he would hold. However he shall not be entitled to any salary or consideration for pension benefits for the period he has not rendered services to the appellant bank on the dictum of no work, no pay.

(ii) All the other legitimate dues of the respondent be also released to him by the appellant as per the rules.

(iii). In the special circumstances of the case, the respondent is awarded a sum of Rs.50,000/- as the litigation cost which the appellant shall pay to the respondent.”

(ii) The effect is that the judgment of the trial court was sustained by the first appellate court with regard to entitlement of the

respondent/plaintiff to join the services with the appellant-bank,

however, arrears of salary were not granted by applying the principle of 'no work, no pay'. Respondent/plaintiff however was to get actual enhanced salary by giving notional benefits to the respondent/plaintiff for the period he had not worked with the appellant/bank.

2. The facts of the case show a chequered history. There was an earlier litigation which was initiated by the respondent/plaintiff being suit No.275/1997. In this suit, two reliefs in alternative were prayed for. One was that if the appellant is treated to have resigned then monetary relief should be granted of Rs.72,951/- and which amount was the difference between the total of the amounts of gratuity, provident fund etc to be reduced from the loan and other liabilities of the respondent/plaintiff to the appellant-bank. Though the relief clause was not too clear, however the cause of action in the plaint showed arising of disputes as to whether at all the plaintiff should be taken to have resigned from the appellant-bank. This suit No.275/1997 (first suit) was originally dismissed, however, an appeal filed by the respondent/plaintiff herein was allowed by the judgment dated 21.1.2003. By this judgment dated 21.1.2003 the first appellate court in the earlier suit held that the respondent/plaintiff herein, appellant in the earlier appeal, cannot be said to have resigned from the appellant-bank because

there was no order passed by the appellant-bank accepting the resignation of the respondent/plaintiff. The first appellate court in the earlier appeal therefore remanded the matter after deciding the additional issue framed in the appeal with respect to the validity of the resignation of the respondent/plaintiff in favour of the respondent/plaintiff and the suit was directed to be decided on merits taking the resignation of the respondent/plaintiff to have been withdrawn and not having been accepted by the bank. Admittedly, neither this judgment of the trial court passed after remand and nor the earlier appellate court judgment dated 21.1.2003 was further appealed from by the appellant-bank herein. After remand of the suit, the suit was decided by the trial court by its judgment dated 2.11.2004 whereby the respondent's/plaintiff's suit was decreed for an amount of Rs.8606/- alongwith interest @ 9% per annum simple being the amount of the TDS which was said to be illegally deducted by the appellant/bank. This earlier matter rested at the stage of the judgment of the first appellate court in the earlier appeal dated 21.1.2003 and in the suit judgment dated 21.1.2003 becoming final and binding between the parties. Therefore, these judgments operate as *res judicata* between the parties as to the respondent/plaintiff not having resigned from the bank. Appellant-bank even then refused to appoint the respondent/plaintiff and consequently the

present suit came to be filed wherein the respondent/plaintiff claimed the reliefs of direction against the appellant/bank for joining back in services and also payment of arrears of salary etc. The subject/present suit was a suit for declaration and injunction and the following reliefs were prayed:-

“In view of the above, this Hon’ble Court may kindly grant mandatory injunction directing the defendant Bank:

(I) To appoint the plaintiff while giving him a posting after due consideration of his promotions by a date as may be determined by this Hon’ble Court.

(II) Not to touch his gratuity, deposits of provident funds etc, and to deduct the arrears of housing loan installments/arrears of recoveries etc, from the accumulated arrears of his salaries found due as payable to plaintiff after due consideration of increments and promotional benefits including consequential benefits.

(III) To give effect to the declarations as may be given by this Hon’ble Court and

(IV) To give the salary to the plaintiff w.e.f. from a date as found by this Hon’ble Court by the declaration as given hereinabove and clear and pay, all the arrears of plaintiff, within a period as may be fixed by this Hon’ble Court.

(V) To give salary for the period from 1.12.1991 to 14.4.93 as with held by the Bank-and credited to sundry creditors A/c. at Badkhera Branch of defendant bank,

(VI) To give interest @ 9% per annum w.e.f. 21.01.03 on the amounts of salary or arrears till the date of final payment of all the arrears due to the plaintiff.”

3. As already stated above, this suit was decreed by the trial court vide its judgment dated 1.12.2005 as per the following observations:-

“The plff. has further prayed for declaration regarding the promotion w.e.f. 24.3.95. Admittedly though the plff. continued in service in view of the order of Ld.ADJ, but is not working. No promotion rules of the plff. has been placed on record at all nor any steps has been

taken by the plff. to prove that the plff. is entitled for the promotion as prayed being without on duty. Accordingly in my considered opinion the plff. has failed to prove his entitlement regarding promotion w.e.f. 24.3.95. Even otherwise the promotion can not be claimed as a matter of right, but plff is entitled to be considered for promotion. As the plff. continued in service, the plff. is entitled for the promotion as per service rules of the deft. along with other benefits in accordance with law. Any claim of the plff. regarding the salary from 1.12.91 to 14.4.93 is barred by limitation categorically, accordingly the plff. is not entitled for any such amount on account of salary. Needless to mention the plff. is further entitled for all other monetary/service benefits in his service in accordance with the service rules and regulations of the deft. There is nothing on the record nor any thing contrary proved by the deft. for disentitlement of the plff. for the relief as prayed in the suit. In totality and in nutshell the case of the plff. in one way or the other remained unimpeached and unrebutted. This issue is accordingly disposed off in favour of the plff. and against the deft.

Relief:

In view of my abovesaid discussions, the suit of the plff. is decreed in favour of the plff. and against the deft. The deft. is directed to appoint and give the place of posting to the plff. The deft. is further directed to consider the case of the plff. for promotion in accordance with the service rules and regulations of the deft. along with other service benefits regarding PF, gratuity etc.. The cost of the suit is also awarded in favour of the plff. and against the deft. Decree sheet be prepared accordingly. File be consigned to R/R.”

4. As already stated above, this judgment of the trial court dated 1.12.2005 has been partially modified by the first appellate court in terms of the impugned judgment by denying the arrears of salary on the ground of ‘no work, no pay’.

5. In my opinion, the aforesaid facts show that no question of law, much less any substantial question of law, arises for this appeal to be entertained under Section 100 CPC because once the earlier judgment in the first suit and appeal became final, by the principle of *res judicata* contained in Section 11 CPC, the appellant-bank was bound to reinstate the respondent/plaintiff. This relief has been correctly granted by both the courts below. Whereas the trial court gave the complete arrears of salary, the first appellate court has denied arrears of salary by applying the principle of 'no work, no pay'. I am noting that as per the statement made before me on behalf of the respondent/plaintiff, and who has filed the connected appeal being RSA No.234/2013, that the said appeal is not pressed and the respondent/plaintiff in the present appeal and the appellant in RSA No.234/2013 is satisfied with the impugned judgment of the first appellate court dated 27.5.2013.

6. Learned counsel for the appellant sought to argue before this Court that the respondent/plaintiff has in fact accepted dues towards the provident fund, gratuity etc as stated in the written statement in the present suit and since to which no replication was filed by the respondent/plaintiff, respondent/plaintiff is not entitled to reinstatement in services, however, counsel for the respondent/plaintiff, on instructions from the
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respondent/plaintiff, states that the respondent/plaintiff has not accepted any amount towards gratuity, provident fund etc and which dues are payable on the services coming to an end and such amounts are not accepted either whole or in part adjustment as is claimed by the appellant-bank. Therefore, though no such issue seems to have been pleaded and urged before the courts below, much less by leading such evidence on behalf of the appellant-bank, even if this issue is looked into, this argument has no merit in view of the statement made before me by the respondent/plaintiff who is present in the Court in person.

7. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.

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8. Counsel for the appellant, on instructions from the appellant who is present in person in Court, states that he has instructions not to press the appeal.

9. Dismissed as not pressed.

APRIL 21, 2014
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VALMIKI J. MEHTA, J.