

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

+ **W.P.(C) No. 5206/2002**

% **25th May, 2015**

SHRI VIJAY KUMAR NARANG Petitioner

Through: Mr. B.K.Pal and Mr. K.K.Arora,
Advocates.

versus

UNION BANK OF INDIA & ORS Respondents

Through: Mr. O.P.Gaggar, Advocate

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

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner, who was an employee of the respondent no.1/Union Bank of India, questions the orders passed by the respondent no.1/Bank dated 20.1.1999, 23.4.1999 and 27.3.2001 whereby it has been held that the petitioner's services with the respondent no.1/Bank have come to an end on account of abandonment of services by the petitioner. These orders of the respondent no.1/Bank read as under:-

“ORDER DATED 20.1.1999

UNION BANK OF INDIA
REGION OFFICE
Shaheed Bhagat Singh Place
Bangla Sahib Marg,
New Delhi-1

RO:DEL:STF:321/99

January 20, 1999

(Regd.A/d)

It is on record that Sh. V.K.Narang was absent from duties from 04.11.1996 to 01.07.1997 and 03.07.1997 to till date. A memo NZ STF 2618/97 dated 03.06.1997 was issued to him to show cause why his continued absent, without valid reasons, should not be treated as voluntary cessation of employment as per clause 17 of the Bipartite Settlement and as amended upto date. In compliance to this memo, he had reported just for duty on 02.7.1999, thereafter continued remain absent till date without any information/application for leave.

Sh. V.K.Narang has thus remained absent for more than 90 days consecutive days unauthorized and thereby under himself liable for action under clause 17 of the Bipartite Settlement that deal with voluntary cessation of employment by the employees.

The Management is also satisfied that Sh. V.K.Narang has no intention to joining duties for the following reasons:-

1. During his above absence, the following letter has been sent asking him to resume duties, but he has failed to comply with the instructions:-

Telegram dated 10.07.1997.

2. He has not cared to send intimation to the Management as to the reason for remaining absent and/or probable duration of his absence.

3. He has been remaining absent without satisfying the requisite conditions under which leave may be taken as per rules of the Bank applicable to him.

Under Clause-17 of the Bipartite Settlement, Sh. V.K.Narang is hereby given 30 days period to resume duties at the branch. He is further required to satisfy the Management that he has not taken up any employment or vocation and that every intention of joining duties. If Sh. V.K.Narang does not report for duty on or before 30 days from the date of this memo of Okhla Branch and does not fulfill the conditions required above for permitting him to resume duties, he will be deemed to have been voluntarily retired from the bank's services.

ORDER DATED 23.4.1999

MEMORANDUM

FROM:

TO:

UNION BANK OF INDIA

SHRI V.K.NARANG

STAFF DEPARTMENT

CLERK/CASHIER

REGIONAL OFFICE

OKHLA BRANCH,

NEW DELHI

N. DELHI

RO: DEL STF 1936:99

DATE: 23.04.1999

Attention of Sh. V.K. Narang is drawn towards our Memorandum No. RD.Del STF:321/99 dated 20.1.99 wherein he was required to resume duties at Okhla Branch within 30 days. Alternatively, Sh. Narang had to fulfill, the conditions required from permitting him in resume duties. Further, he was earlier absent from duties from 04.11.1996 to 01.07.97 and

from 3.07.1997 to till date. However, Sh. Narang has neither resume duties nor sent any communication within the given time period. The same was duly acknowledged by him on 6.3.99.

In view of this above, Shri Narang is informed that under clause 17 of the V.B.Parties settlement his case has been treated as voluntary cessation from the services of the Bank with immediate affect further Shri Narang is informed that his name has been struck off from the Muster rolls of the Branch.

ORDER DATED 27.3.2001

RO:DEL:STF:\2523:2001

Dated 27.3.2001

Shri V.K.Narang

B-26, Anand Vihar

New Delh-92

Dir Sir,

PENSIONARY BENEFITS

With reference to your claim forms for sanction of pension, we wish to inform you that you have voluntarily abandoned for pensionary benefits under Union Bank of India (Employees) Pension Regulations, 1995.

Thanking you,

Yours Faithfully

(A.K.Pathak)

SR. MANAGER (S)”

2. The issue in question is of the petitioner's absence from 4.11.1996 to 1.7.1997 and from 3.7.1997 till the order dated 20.1.1999 was passed and on account of such absence it has been held that the petitioner abandoned his services.

3. So far as the period from 4.11.1996 to 1.7.1997 is concerned, I put a specific query to the counsel for the petitioner to show to me the application or applications by which petitioner had applied for medical leaves for this period and he was sanctioned medical leaves allegedly on the ground that petitioner had suffered heart attack and was also otherwise not well, but counsel for the petitioner could not point out to me from the record that the petitioner had filed any application whatsoever seeking medical leave from 4.11.1996 to 1.7.1997 or for this period there is an order of sanctioning of leave of the petitioner on medical grounds. In fact, for this period, counsel for the petitioner could not even point out to me any certificates of doctors on the panel of the respondent no.1/Bank and which certificates advised that petitioner should be on bed rest and should not attend duty from 4.11.1996 to 1.7.1997. Clearly, therefore, petitioner has failed to make out any case of any valid explanation for absence from duty with the respondent no.1/Bank from 4.11.1996 to 1.7.1997.

4. So far as the second period from 3.7.1997 till the issue of the impugned order dated 20.1.1999 is concerned, once again counsel for the petitioner was not able to point out to me the applications filed by the petitioner with the respondent no.1/Bank seeking medical leaves, and any orders by which leaves were sanctioned to the petitioner for this period from 3.7.1997 to 20.1.1999. For this period also, no certificates could be pointed out by the counsel for the petitioner to this Court issued by any doctor or hospital on the panel of the respondent no.1/Bank giving such medical condition of the petitioner for entitling him to not join his duties with the respondent no.1/Bank. Therefore, there is no explanation in the form of any applications, seeking leaves or certificates of medical doctors on the panel of the respondent no.1/Bank showing entitlement of the petitioner for medical leaves in this period.

5. Counsel for the petitioner firstly sought to place heavy reliance upon Annexure P-15 to the writ petition being the letter of July, 1999 sent by the petitioner to the respondent no.1/Bank, and on the basis of this letter it is argued that petitioner has shown sufficient reasons for his absence from the respondent no.1/Bank, however, surely, self serving letter without being accompanied or substantiated by means of leave applications, sanctioned

leave orders and medical certificates of the approved panel of doctors/hospital of the respondent no.1/Bank, will not in any manner help the petitioner to show justification for not joining his services with the respondent no.1/Bank.

6. Counsel for the petitioner then tried to refer to Annexure P-1 to the writ petition being the Inter Office Memo dated 22.12.1997 and in which there is reference to certain medical certificates and an application, however, this Annexure P-1 to the writ petition dated 22.12.1997 cannot be read as that it would be for leave applications for the total period from 4.11.1996 to 1.7.1997 and 3.7.1997 to 20.1.1999. Also, this Inter Office Memo dated 22.12.1997 is not a sanction order of leaves nor does it in any manner accept that the petitioner was entitled to medical leaves for the periods claimed by him, much less on account of valid certificates of doctors/hospitals on the panel of the respondent no.1/Bank.

7. Clearly therefore, the petitioner was unauthorizedly absent from his duties with the respondent no.1/Bank from 4.11.1996 to 1.7.1997 and 3.7.1997 to 20.1.1999.

8. Learned counsel for the petitioner has sought to place reliance upon the various judgments of the Supreme Court to argue that without

following the principles of natural justice and without holding enquiry petitioner could not have been terminated from services and in this regard reliance is placed upon *Mafatlal Narandas Barot Vs. J.D. Rathod, Divisional Controller, State Transport Mehsana and Another AIR 1966 SC 1364; The State of Assam and Others Vs. Akshaya Kumar Deb AIR 1976 SC 37 and Deokinandan Prasad Vs. The State of Bihar and Others AIR 1971 SC 1409.*

9. In my opinion all the judgments relied upon by the petitioner do not apply to the facts in hand and what will really apply are the judgments of the Supreme Court in the cases of *Syndicate Bank Vs. The General Secretary, Syndicate Bank Staff Association & Anr. (2000) 5 SCC 65, 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* as stated in detail below.

10. I have considered this aspect of the issue of abandonment of services of an employee of the bank from his services with the bank in the judgment in the case of *Tilak Raj Mullick Vs. State Bank of India & Ors.* W.P.(C) No. 4886/1994 decided on 23.9.2013 and the relevant paras of the judgment are paras 7 to 11 and which read as under:-

“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 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.”

(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.”

11. In the present case, petitioner was duly served with the show cause notice asking him to join his services with the respondent no.1/Bank, and as stated in the order dated 20.1.1999 of the respondent no.1/Bank, but the petitioner failed to do so. Clearly therefore there is abandonment of services of the petitioner with the respondent no.1/Bank.

12. The Supreme Court has in fact recently in the judgment in the case of ***Vijay S. Sathaye Vs. Indian Airlines Ltd. And Others (2013) 10 SCC 253*** held that once a person does not report for duty for a long time and does not join his duty accordingly, then the initial stage absence from duty can be misconduct but when the absence is for a long period this absence for a long period amounts to voluntary abandonment of service resulting in termination of service automatically without requiring any further order

from the employer. The relevant paragraphs of the judgment in the case of

Vijay S. Sathaye (supra) are paras 12 to 16 and these paras read as under:-

“12. It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.

13. In *Jeewanlal (1929) Ltd. v. Its Workmen: AIR 1961 SC 1567*, this Court held as under: (AIR p.1570, para 6)

“6. ...there would be the class of cases where long unauthorised absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee.”

(See also *Shahoodul Haque v. Registrar, Coop. Societies: AIR 1974 SC 1896*.)

14. For the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as “retrenchment” from service. (See *State of Haryana v. Om Parkash: (1998) 8 SCC 733*).

15. In *Buckingham and Carnatic Co. Ltd. v. Venkatiah: AIR 1964 SC 1272*, while dealing with a similar case, this Court observed: (AIR p.1275, para 5)

“5. ...Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf.”

A similar view has been reiterated in *G.T. Lad v. Chemical and Fibres of India Ltd. : AIR 1979 SC 582*.

16. In *Syndicate Bank v. Staff Assn.: (2000) 5 SCC 65* and *Aligarh Muslim University v. Mansoor Ali Khan : AIR 2000 SC 2783* this Court ruled that if a person is absent beyond the prescribed period for which

leave of any kind can be granted, he *should be treated to have resigned and ceases* to be in service. In such a case, there is no need to hold an enquiry or to give any notice as it would amount to useless formalities. A similar view has been reiterated in *Banaras Hindu University v. Shrikant: (2006) 11 SCC 42*, *Chief Engineer (Construction) v. Keshava Rao: (2005) 11 SCC 229* and *Bank of Baroda v. Anita Nandrajog : (2009) 9 SCC 462.*”

13. Clearly therefore, the petitioner is deemed to have abandoned his services with the respondent no.1/Bank and has been a recalcitrant and an indisciplined employee. Respondent no.1/Bank was fully justified therefore in holding that the petitioner had abandoned his services with the respondent no.1/Bank and his services with the respondent no.1/Bank stood terminated.

14. Respondent no.1/Bank in its counter affidavit has referred to Regulation 22 of its Regulations which provides for forfeiture of service once there takes place termination of services of an employee with the respondent no.1/Bank. Since in the present case, there is termination of services of the petitioner with the respondent no.1/Bank, and petitioner's services have been terminated on account of his deemed abandonment of services, petitioner's service record with the respondent no.1/Bank stands wiped out and petitioner therefore is not entitled to service benefits as claimed by him including of pension or provident fund.

15. In view of the above, there is no merit in the petition. Ordinarily, I would have dismissed this writ petition with costs of Rs.50,000/- considering that the present is totally a frivolous case and petitioner has been a totally indisciplined employee, however, considering the fact that petitioner is only an employee of a bank, I refrain from imposing costs.

16. Dismissed.

MAY 25, 2015
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VALMIKI J. MEHTA, J.