

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

**FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

**TUESDAY, THE SIXTEENTH DAY OF AUGUST,
TWO THOUSAND AND SIXTEEN**

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Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.31730 of 2010

Between:

N. Swapna, D/o.N. Madhava Reddy, Aged:about 28 years,
Unemployee, R/o.H.No.79/98-B, Krishna Nagar, Kurnool.

.. Petitioner

AND

State Bank of India, rep. by its Chairman, Corporate Centre, State
Bank Bhavan, Madam Cama Road, Mumbai and others.

.. Respondents

The Court made the following:

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.31730 of 2010

ORDER

Petitioner was appointed as Officer Marketing and Recovery (OMR) on 19.11.2007 in respondent Bank initially for a period of two years which was extended subsequently for a period of one year. On 03.04.2010, petitioner submitted three months due notice of resignation. After issuance of notice, petitioner worked up to 30.06.2010. On 29.08.2010, petitioner submitted a representation seeking leave to withdraw the resignation. On 23.09.2010, petitioner submitted a detailed representation requesting to consider her entitlement for absorption in accordance with the scheme of absorption notified vide Circular dated 20.07.2010. No reply was furnished to the petitioner. In the circumstances, petitioner instituted this writ petition.

2. In this writ petition, petitioner *inter alia* prays for declaration that the action of respondents in not acting upon her representation dated 29.08.2010 and not permitting her to attend the duty and not granting permanent absorption into service to the post of OMR in terms of Circular Reference No.HR/CM/6/SPL/612 dated 20.07.2010, as illegal.

3. Heard learned counsel for the petitioner and learned Standing Counsel for the respondent-Bank.

4. Learned counsel for the petitioner submits that the service conditions are governed by State Bank of India Officers-Marketing and Recovery (Rural) Service and Conduct Rules (for short' the Rules'), and Rule 20 of the Rules deals with termination of appointment and according to Sub-rules 4 and 5 of Rule 20, after completion of one year, an employee can terminate the contract of service by giving three months notice in advance or three months gross emoluments in lieu thereof, however, such resignation cannot come into effect unless the same is accepted by the competent authority and such acceptance is communicated in writing to the employee concerned. He would further submit that in the instant case, there was no communication of acceptance of resignation and therefore, the resignation has not come into effect by the time scheme of absorption was formulated vide Circular dated 20.07.2010. He further submits that the scheme of absorption was notified for those contract employees working as OMR and this scheme also covers such of those officers, who have already resigned and submitted their resignation, but were not yet released and in terms thereof, petitioner exercised for option to withdraw the resignation and to consider her for absorption according to the scheme. He would therefore submit that it was illegal on the part of the respondent Bank in not accepting the request of petitioner for rejoining in duties and for granting absorption in accordance with the scheme notified on 20.07.2010.

5. Ms.V. Uma Devi, learned Standing Counsel for respondent Bank, fairly submitted that material on record would not disclose communication of letter of resignation, but she would submit that the resignation was accepted on 03.07.2010 by respondents and

communicated to the Bank where petitioner was working earlier and this would clearly show that the resignation was already accepted by the competent authority. She further submits that the fact that the petitioner mentions in her representation dated 23.09.2010 about the acceptance of resignation would show that the petitioner was aware of acceptance of resignation and therefore, the relationship of master and servant ceased and the petitioner is not entitled to ask for resumption of duties and consideration for absorption in accordance with the scheme notified on 20.07.2010.

6. The issue for consideration is, whether the orders of acceptance passed by the competent authority on 03.07.2010 would amount to termination of relationship of master and servant and therefore, petitioner cannot claim for extension of benefit of scheme of absorption dated 20.07.2010.

7. Petitioner is governed by the Rules referred to above. Rule 20 of the Rules deals with termination of appointment. For the purpose of this case, relevant rules are Rule 20.4 and 20.5, which read as under:

“20.4. After completion of one year, an Officer may terminate the contract of service from his side by giving a notice of three months, in writing or three months gross emoluments in lieu thereof. In the event of resignation/termination of service, no variable pay shall be paid for the broken period when an officer resigns before completion of calendar quarter for payment of variable pay. In other words, variable pay may be paid only after the assessment the officer's performance at the end of stipulated period as above.

20.5. No Officer will be deemed to have left the Bank's service unless the Bank communicates its approval for termination of contract of service in writing.

In terms of Rule 20.4, employee is entitled to submit resignation by giving three months notice or pay three months salary in lieu of such notice. In the instant case, petitioner gave three months notice. However, the relationship does not terminate automatically on completion of three months period, and in accordance with provision in Rule 20.5, the resignation has to be accepted and only after communication of acceptance, officer is deemed to have left the Bank service. Thus, a conjoint reading of Rules 20.4 and 20.5 would make it clear that unless acceptance of resignation is communicated, it does not come into force. Admittedly, acceptance of resignation is not communicated. In the meantime, petitioner submitted a representation on 29.08.2010 withdrawing the resignation and on 23.09.2010, she has submitted a detailed representation requesting to permit her to resume duties and to consider for her absorption in accordance with the scheme dated 20.07.2010. Even by this date, though the petitioner specifically refers to non-communication of acceptance of resignation, no effort was made to communicate the order of acceptance of resignation. Thus, petitioner is deemed to have been in service by the time the scheme of absorption is notified.

8. Further more, even according to Clause (xii) of the scheme of absorption, the Officer, who has submitted resignation but not released, is entitled to ask for withdrawal of resignation and for consideration for absorption. Clause (xii) reads as under:

“The OMRs/TOFSs who have resigned from the service of the Bank and rejoined in higher cadre as OMR-S1 and TOFS-S1 will also be considered for permanent absorption on the same footing as OMRs and TOFSs. Similarly, the Officers, who have submitted resignation, but were not yet released, will have the option to withdraw resignation and will be offered permanent appointment under the scheme.”

Thus, though before the scheme was notified petitioner resigned from service, by the time the scheme is notified and by the time she applied for withdrawal of resignation and consideration for absorption, her resignation was not accepted in accordance with Rules 20.4 and 20.5 of the Rules governing the service and therefore, she is entitled for asking for absorption in accordance with the scheme.

9. Having regard to the specific provisions referred to above, the act of respondents in not considering the claim of petitioner for resumption of duties and for grant of absorption in accordance with the scheme notified on 20.07.2010, is per se illegal.

10. The Writ Petition is accordingly allowed and the respondents are directed to take immediate steps for compliance of the request of petitioner for absorption in accordance with the scheme notified on 20.07.2010. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO, J

16th August, 2016

sj