

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.145 OF 1998

Venkat Bansi Ighave of
Indian Inhabitant residing at
Mukteshwar Nagar,
Behind Macro Tours, Usmanabad

-- PETITIONER

VERSUS

1. State Bank of Hyderabad,
A Company having its Zonal
Office at "Rachane Sansad",
278, S.G.Marg, Prabhadevi,
Bombay 400 025.

2. S.B.Panse,
The Presiding Officer,
Central Government Industrial Tribunal
No.2, having his office at
Citi-Ice Building,
Bombay.

-- RESPONDENTS

Mr.Yogesh Bolkar h/f Mr.R.B.Raghuwanshi, Advocate for the
petitioner.
Mr.L.V.Sangit h/f Mr.S.R.Deshpande, Advocate for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/02/2017

ORAL JUDGMENT :

1. Learned Advocates for the respective sides submit that they
have no objection if this Court hears this matter.

2. Respondent No.2 in this matter is the Tribunal and hence

stands deleted from the proceedings.

3. The petitioner is aggrieved by the award dated 05/11/1996 delivered by the Central Government Industrial Tribunal No.2 at Bombay (hereinafter referred to as the Tribunal), by which the Reference was answered in the negative and the action of the Regional Manager, State Bank of Hyderabad Office, Nanded, deeming voluntary retirement of the petitioner w.e.f. 01/02/1992 was sustained.

4. This petition was admitted on 12/02/1998.

5. Mr.Bolkar h/f Mr.R.B.Raghuwanshi, learned Advocate for the petitioner draws my attention to the written notes of arguments submitted by the petitioner before the Tribunal. Based on the same, he submits that the respondent / Management has presumed voluntary retirement of the petitioner without observing the principles of natural justice and without affording an opportunity of hearing to the petitioner.

6. He submits that though after his transfer on 24/01/1992 from

Osmanabad Branch to the Bhokar Branch, after being relieved on 31/01/1992, he could not join duties due to illness. Considering the contentions set out below paragraph No.3(c) of the written notes of arguments, it can be seen that the respondent has foisted its decision upon the petitioner and presumed voluntary retirement. He places reliance upon the judgment of the Delhi High Court in the matter of *Rahul Butalia Vs. State Bank of India*, (1995)II LLJ 242 to support his contention that the impugned action deserves to be quashed and set aside for violation of the principles of natural justice.

7. Mr.Sangit alongwith Mr.Deshpande, learned Advocates for respondent No.1 submit that the sequence of events would clearly indicate that the petitioner did not have a desire to resume duties at the place of transfer. He challenged his transfer before the Civil Court by filing a civil suit on 31/01/1992. Subsequently, the civil suit was withdrawn. Though the bank had published a notice and have written several letters to the petitioner, yet the petitioner did not report for duties. Finally, after all efforts to seek the presence of the petitioner on duty failed, the bank was left with no option but to presume that he has voluntarily left his employment on the basis of the settlement between the workers and the bank.

8. He further submits that the Management had not acted in undue haste. Every effort was made to seek the presence of the petitioner. When it was noticed that he was not reporting for duties for almost 6 months, it was presumed that he did not desire to continue in employment. Clause 17 of the Bipartite Settlement and the conduct of the respondent would indicate that every possible opportunity of reporting for duties was given to the petitioner.

9. He then relies upon the detailed affidavit in reply filed by the Bank on 05/09/2008 in support of his contention.

10. I have considered the submissions of the learned Advocates as are recorded hereinabove.

11. For the sake of clarity, the dates and sequence of events mentioned below would be significant :-

[a] Petitioner's date of birth is 03/07/1935.

[b] He was appointed on 01/02/1964.

[c] His due date of retirement was 02/07/1995.

[d] On 24/01/1992, he was transferred.

[e] On 31/01/1992, he was relieved from service.

[f] He preferred a civil suit challenging the transfer and

subsequently withdrew it.

[g] The Bank served a letter on 14/03/1992 calling upon him to report for duties.

[h] Similar letter was issued on 07/04/1992.

[i] By letter dated 25/05/1992, he was advised to appear before the Doctor.

[j] By notice dated 19/06/1992, he was called upon to report for duties.

[k] A notice was published in the newspaper on 18/07/1992.

12. I have gone through clause 17 of the Bipartite Settlement with regard to voluntary cessation of employment by the workman covered by the settlement. Clause 17(a) enables the Management to serve a letter upon the employee who is continuously absent without obtaining leave, after 90 days of such absence. If he does not report for duties within 30 days of the notice, the Management can presume that the employee has voluntarily retired from service. The Bipartite Settlement was produced before the Tribunal and it has reproduced clause 17 below paragraph 10 of the impugned judgment.

13. Even if the case of the petitioner is taken at its best, his defence is that he was suffering from Asthmatic Bronchitis. It is

canvassed that the petitioner was taking treatment for the same. No material was brought before the Tribunal to indicate that the petitioner was admitted in some hospital and that he was required to remain in the hospital for treatment. If the petitioner could approach the Civil Court and could venture into litigation, it cannot be accepted that only when it came to joining duties, the Asthmatic Bronchitics prevented him from physically working.

14. The petitioner has admitted in his written notes of arguments filed before the Tribunal that he received letters dated 14/03/1992, 07/04/1992, 25/05/1992 and 19/06/1992 calling upon him to report for duties and to subject himself for medical examination. Finally, on 03/11/1992, the respondent declared that the petitioner has voluntarily left employment from 01/02/1992.

15. Though the respondent cannot be faulted and as rightly held by the Tribunal, the respondent cannot be said to have violated the principles of natural justice, the petitioner would be entitled to the retiral benefits as he is not dismissed from service for such a misconduct which would tantamount to moral turpitude.

16. While calculating his legal dues and gratuity, in the event there

is no other legal impediment, in my view the voluntary act of leaving employment will have to be considered from the date 03/11/1992 when the Bank declared that the petitioner is presumed to have left service. The period from 01/02/1992 till 03/11/1992 (10 months) is the period during which the conduct of the petitioner is seen and then the Management has concluded that he has voluntarily left employment. The date of such voluntary abandonment though relates back to 01/02/1992, would be effective from 03/11/1992 when the name of petitioner struck of the rolls. His conclusion of employment would therefore be w.e.f. 03/11/1992 and he would not be entitled to wages for his absence during this period.

17. In the Rahul Butalia case (supra), the employee was away from work from 05/03/1990 till 17/04/1990. The Management issued a letter on 18/04/1990 declaring that if he did not resume duties, he would be deemed to have voluntarily abandoned his duties. The Delhi High Court interfered in the matter since the Bank presumed abandonment after only 6 weeks of absence. In the instant case, the bank has presumed abandonment after 10 months of absence.

18. In the matter of Vantage Advertising V/s Javedali K.Hashmi [2011(I) CLR 127], this Court held that when an employee is called

upon several times to report for duties and if he does not do so for a considerable time, it must be presumed that he is not interested in employment.

19. Considering the above and the reasons assigned by the Tribunal in the impugned award, I do not find that the same could be termed as being perverse or erroneous. This petition, being devoid of merit, is therefore, dismissed. Rule is discharged.

20. For the sake of clarity, it is observed that in the event the petitioner is entitled to retiral benefits and gratuity and if the same has still not been extended to him, the respondent Bank shall do so within a period of 12 (twelve) weeks from today by considering his employment from 01/02/1964 till 03/11/1992.

(RAVINDRA V. GHUGE, J.)