

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.A.No.2524 of 2010
and
MP.No.1 of 2010

The Chief General Manager,
State Bank of India
No.21, Rajaji Salai,
Chennai- 600 001. ... Appellant

vs.

1.The Industrial Tribunal,
Chennai, Tamil Nadu.

2.S.Sevagamoorthy ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 16.08.2010 passed by a learned Single Judge of this Court in W.P.No.7288 of 2000.

WP.NO.7288 of 2000:Writ Petition filed under Art 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in ID.No.73/95 from the file of the First Respondent and to quash its award dated 23.08.99.

For Appellant : Mr.S.Jayaraman
For R2 : Mr.Balan Haridoss

...

JUDGMENT

(Judgment of the Court was made by HULUVADI G. RAMESH,J.)

The unsuccessful writ petitioner viz., State Bank of India is the appellant herein. This intra-court appeal is directed against the order dated 16.08.2010 passed in W.P.No.7288 of 2000, whereby, the learned Single Judge upheld the award of the first respondent - Tribunal in I.D.No.73 of 1995 and dismissed the writ petition filed by the appellant-Bank.

2.The relevant background facts of the case are that the second respondent-employee had joined in service during the year 1976 and he was confirmed in service with effect from 12.03.1985. He unauthorisedly absented from duty from 08.02.1991 onwards. He was issued with a notice dated 15.04.1991, calling upon him to join duty, to which, he did not respond. He was issued with another letter dated 25.04.1991, to which also, he did not respond. Thereafter, he was issued with yet another communication dated 23.05.1991 as per the provisions of the Bipartite Settlement, asking him to report to duty within 30 days, failing which, he would be deemed to be voluntarily retired from service. Even for that notice, there was no response from the second respondent - employee. Hence, he was issued with another letter dated 25.06.1991 treating him as voluntarily retired from service with effect from 24.06.1991, to which, by reply dated 10.07.1991, he requested the appellant bank to permit him to join duty. Since the said request was not conceded by the appellant bank, the second respondent - employee ultimately, raised an Industrial Dispute in ID.No.73 of 1995 before the first respondent -Tribunal, which passed an award on 23.08.1999, holding that the termination of the services of the second respondent - employee amounts to retrenchment and the appellant Bank has failed to satisfy the conditions enumerated under Section 25-F of the Industrial Disputes Act, 1947 and hence, the second respondent -employee was entitled to reinstatement in service with backwages, continuity of service and other attendant benefits. Challenging the said award, the appellant Bank has preferred a writ petition in WP.No.7288 of 2000, which was dismissed by the learned Single Judge, by the order impugned herein. Hence, this intra-court appeal by the appellant - Bank.

3.The learned Single Judge, while dismissing the aforesaid writ petition, was of the view that the second respondent - employee has been sent out of service on voluntary retirement and not on holding any enquiry and in such an event, the explanation of the second respondent -employee would not have been relied; if the notice dated 25.06.1991 is held to be a valid notice and if the reasons for coming to the conclusion that the second respondent had no intention to join duty, have been stated, then only the explanation offered by the second respondent -employee can be considered, to test the correctness of the same; and the appellant - Bank has not stated anywhere as to what are the materials on which they had come to the conclusion that the second respondent - employee had no intention to join duty. Opining so, the learned Single Judge confirmed the award of the first respondent - Tribunal.

4.The learned counsel for the appellant - Bank contended that the second respondent-employee unauthorisedly absented from duty from 08.02.1991 and in spite of the appellant - Bank

sending communications to him on 15.04.1991 and 25.04.1991 and giving him one month time from 25.04.1991, for reporting to duty, the second respondent did not turn up; thereafter, the appellant -Bank has sent another communication dated 23.05.1991 asking the second respondent - employee to report to duty within 30 days, failing which, he would be deemed to be voluntarily retired from service, to which, there was no response on the part of the second respondent - employee; therefore, the appellant - Bank was constrained to issue the communication dated 25.06.1991 intimating the second respondent - employee that he was treated as having voluntarily retired from service with effect from 24.06.1991 in accordance with the Bipartite settlement. The learned counsel for the appellant - Bank further contended that when the appellant -bank has considered the second respondent -employee as having voluntarily retired from service, the question of permitting him to join duty, does not arise; however, without considering these material factors in proper perspective, the first respondent - Tribunal as well as the learned Single Judge erred in holding that the appellant -Bank did not satisfy the requirement of furnishing evidence to come to the conclusion that the second respondent - employee has no intention to join duty. In support of his contention, the learned counsel for the appellant - Bank placed reliance on a decision of the Supreme Court in Punjab and Sind Bank and others v. Sakattar Singh [(2001) 1 SCC 214].

5. On the contrary, the learned counsel for the second respondent -employee contended that no notice was served and no enquiry was conducted before effecting the order, considering the second respondent - employee as voluntarily retired from service with effect from 24.06.1991; as such, the order passed by the learned Single Judge affirming the award passed by the first respondent - Tribunal is perfectly justified and valid and the same does not require any interference.

6. Heard the learned counsel appearing for the respective parties and perused the materials placed before this Court.

7. It is not in dispute that the second respondent -employee unauthorisedly absented from duty from 08.02.1991 onwards. The appellant -Bank issued three notices, calling upon the second respondent -employee to report to duty, to which, he did not turn up. Hence, the appellant - Bank issued a communication dated 25.06.1991, treating the second respondent -employee as voluntarily retired from service with effect from 24.06.1991.

8. It is the plea of the second respondent -employee that due to his illness, he absented from duty and when he reported to duty on 27.06.1991, he was not permitted to join duty by the appellant - Bank. Further, according to the second respondent - employee, no proper notice was served and no enquiry was

conducted before treating him as voluntarily retired from service and hence, the action of the appellant- Bank is illegal and in violation of the principles of natural justice.

9. Having regard to the plea of the second respondent - employee and taking note of the evidence produced by him, the first respondent - Tribunal has passed an award in the Industrial Dispute raised by the second respondent - employee, ordering reinstatement in service with continuity of service, backwages and other attendant benefits.

10. The learned Single Judge, while confirming the award so passed by the first respondent - Tribunal, found that the notice dated 25.06.1991 satisfied only the first requirement to call upon the employee to join duty within 30 days and did not satisfy the second requirement to state the grounds for the Bank to come to the conclusion that the employee had no intention of joining duty, in the light of the observation of the Supreme Court in *Syndicate bank v. General Secretary, Syndicate Bank Staff Association* and another [AIR 2000 SC 2198].

11. In the decision relied on by the learned counsel for the appellant -Bank in *Punjab and Sind Bank* (supra), it has been held as follows:

"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 banks 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 banks 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 misconduct 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."

In that case, after issuance of three letters directing him to rejoin duty, the employee was terminated from service, as he unauthorisedly absented from duty for continuous period of 190 days. The High Court held that the order of termination was a nullity because of violation of the principles of natural justice. The Bank went on appeal, in which, the Supreme Court, after perusal of the materials placed on record, observed that in the absence of any record that the employee had reported for duty within the period indicated in the notice issued in terms of clause 16 of IV bipartite settlement, the High Court had proceeded on an erroneous basis of non-compliance with the principles of natural justice, whereas the true content of the principles of natural justice should have been borne in mind, particularly, when there was an agreement between the parties as to the manner in which the situation should be dealt with and the consequence that would ensue thereof. Accordingly, the Supreme Court allowed the appeal filed by the Bank and set aside the order made by the High Court in the writ petition filed by the employee.

12. This Court is of the view that the decision of the Supreme Court in Punjab and Sind Bank (supra) relied upon by the learned counsel for the appellant - Bank, is applicable in all its force to the facts of the present case, wherein also, the second respondent - employee unauthorisedly absented from service for more than 90 days and did not join duty, after issuance of three notices by the appellant - Bank. In fact, he did not even care to send any explanation for his unauthorised absence by way of reply to the said notices. In such circumstances, it could very well be presumed that the second respondent - employee has no intention of joining duty and he does not require the job any more and will stand retired from service. Therefore, the action of the appellant - Bank in issuing the communication, treating the second respondent -

employee as voluntarily retired service is valid and as per law. Though the second respondent - employee claimed that he had sent communication explaining his absence and seeking permission to join duty, it is noteworthy that the same was made after the order of voluntary retirement had been passed, which would only go to show that the second respondent -employee was making a futile attempt to patch up the lapse on his part.

13. That apart, the learned Single Judge tried to distinguish the case on hand from the case decided by the Supreme Court by pointing out that the appellant - Bank did not satisfy with the legal requirements. We are not in agreement with the same as the act committed by the second respondent -employee is not a misconduct, for which, a roving enquiry is needed. Therefore, we are of the opinion that following the decision of the Supreme Court in Punjab and Sind Bank (supra), the order passed by the learned Single Judge confirming the award of the first respondent - Tribunal is liable to be quashed and is accordingly, quashed.

14. At this juncture, the learned counsel for the second respondent-employee submitted that the second respondent-employee has already retired from service on reaching the age of superannuation and given the period of service rendered by the second respondent - employee, the appellant - bank may be directed to give pensionary benefits to the second respondent - employee, for which, the learned counsel for the appellant - Bank submitted that the second respondent -employee has rendered only 7 years of service and has not completed 10 years of service, which is the qualifying service for grant of pension and therefore, he is not entitled to pensionary benefits.

15. Considering the above submissions made by the respective learned counsel and taking into account the fact that the second respondent - employee has rendered 7 years of service, we are of the opinion that interests of justice shall be sub-served, if the second respondent -employee is provided with a lumpsum amount by way of compensation for the services rendered by him in the past to the appellant - Bank.

16. Accordingly, the order of the learned Single Judge is modified to the effect that the appellant - Bank shall pay a sum of Rs.1,00,000/- as lumpsum compensation to the second respondent - employee, within a period of one month from the date of receipt of a copy of this judgment.

17.This intra-court appeal is disposed of in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rk

To

The Industrial Tribunal,
Chennai, Tamil Nadu.

copy to

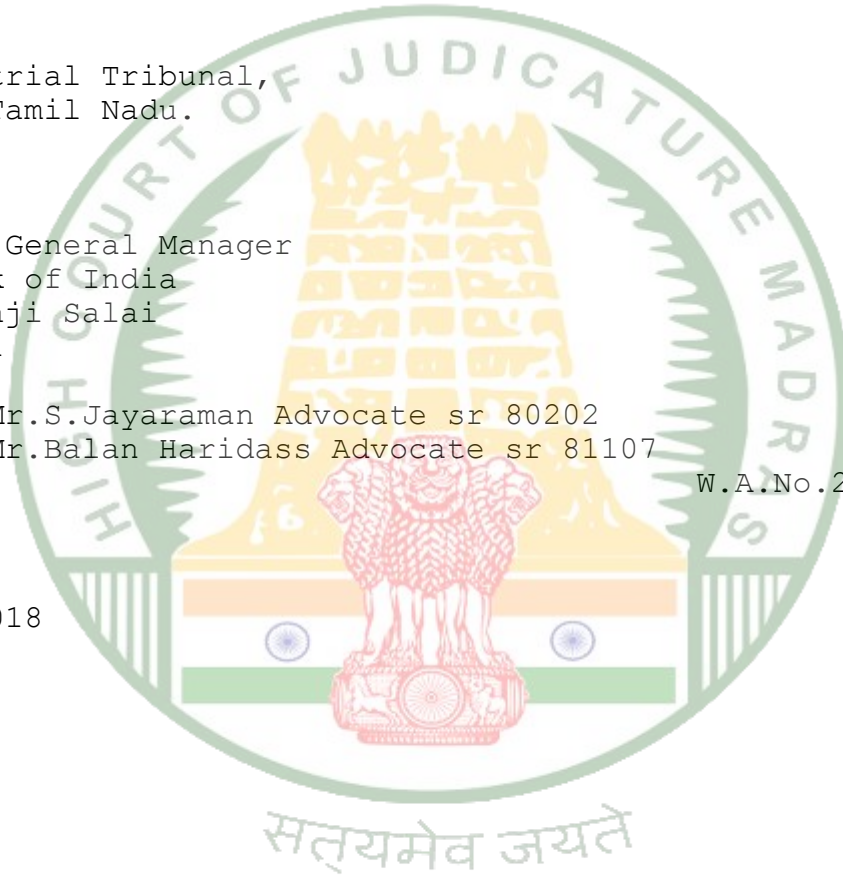
The Chief General Manager
State bank of India
No.21 Rajaji Salai
Chennai 01

+1 cc to Mr.S.Jayaraman Advocate sr 80202

+1 cc to Mr.Balan Haridass Advocate sr 81107

W.A.No.2524 of 2010

ks(co)
aa27/02/2018



WEB COPY