

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: September 26, 2017

Judgment delivered on: December 22, 2017

+ W.P.(C) 9001/2015

KAILASH KUMAR

..... Petitioner

Through: Mr. Motahar Hossain, Adv.

versus

M/S SYNDICATE BANK LTD.

..... Respondent

Through: Mr. V. Sudeer, Adv.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

CM No. 47475/2016

This is an application filed by the petitioner seeking permission to place additional documents on record.

For the reasons stated in the application, same is allowed. The additional documents are taken on record.

The application stands disposed of.

W.P.(C) 9001/2015

1. The present petition has been filed by the petitioner with the following prayers:

“Wherefore, it is most respectfully prayed that this Hon’ble Court may be graciously pleaded to:-

- i) Issue a writ, order or direction to Syndicate Bank to relieve the Petitioner from services of the Bank by accepting the resignation from the employment as Probationary Asst. Manager (OL) from the Syndicate Bank.*
- ii) Quash the letter dated 04.08.2015 issued by Personnel Cell, Regional Office, Syndicate Bank, Coimbatore;*
- iii) Pass such other order or direction, which this Hon’ble Court deems it fit and proper under the circumstances of the case.”*

2. In substance, the petitioner is challenging the communication dated August 4, 2015 whereby the respondent has rejected the request of the petitioner to resign from the service of the respondent Bank without first giving notice for a period of three months and calling upon the petitioner to reimburse the bond amount of Rs.2,00,000/- to the Bank. The Bank has called upon the petitioner to reimburse an amount of Rs.3,10,725.89/- and to confirm the same before he is relieved from the services of the Bank. It is the case of the petitioner that he was recruited for the services of the respondent Bank vide appointment letter dated April 30, 2015. One of the conditions of the appointment was, the petitioner should execute an agreement along with a guarantor in favour of the Bank agreeing to serve the Bank for a minimum period of two years from the date of joining the services of the Bank and for

such other extended period as may be deemed necessary, failing which the petitioner and the guarantor are liable to pay Rs.2,00,000/- by way of compensation / liquidated damages to the bank. Thereafter on May 27, 2015, petitioner along with the guarantor executed an agreement and thereafter on June 1, 2015, petitioner joined the Bank as Probationary Officer. It is the case of the petitioner that his mother was suffering from heart disease and high blood pressure and she was in serious condition for which he had to come to Delhi from where he made an application dated June 4, 2015 to the Controlling Officer for grant of 5 days leave to enable him to come to Delhi and see his mother. After coming to Delhi on leave, he fell down from the stairs of the Railway Station at Delhi and got hurt. It is his case, as there was no improvement in his health, he was advised 21 days more bed rest and was unable to attend the office. He applied for leave dated July 2, 2015 till July 22, 2015. Thereafter he sought extension of leave till July 27, 2015. It is his case that on July 29, 2015, he tendered his resignation. Pursuant thereto, respondent Bank sent a letter dated August 4, 2015 (impugned herein), the details of which have already been narrated above.

3. Counter-affidavit has been filed by the respondent Bank. It is stated that the petitioner was appointed as a Specialist Officer vide appointment

letter dated April 30, 2015 and was posted at Bank's Regional Office at Coimbatore. Clauses 7 and 24 of the appointment letter stipulates the condition of executing a service bond and payment of Rs.2,00,000/- amongst other terms which were accepted by the petitioner on May 27, 2015 and pursuant thereto, petitioner and the guarantor executed a necessary agreement / service bond dated May 27, 2015 jointly / severally agreeing to pay Rs.2,00,000/- to the Bank by way of compensation and for liquidated damages on demand by the Bank in case the petitioner fails to serve the Bank for a period of 2 years from June 1, 2015 irrespective of place of posting or subsequent place of transfers at the discretion of the Bank. Petitioner joined the Bank at Coimbatore on June 1, 2015. The Bank in their counter-affidavit reiterates the submissions made by the petitioner with regard to the leave he had applied and sought for. The respondent justified the impugned action and the claim of the amount of Rs.3,10,725.89/- before the petitioner could be relieved.

4. It is the submission of Mr. Motahar Hossain, learned counsel for the petitioner that it is not the case of the respondent that they have imparted training to the petitioner, which necessitated the incorporation of a stipulation binding the petitioner not to leave the Bank for a particular period. He stated,

in the absence of a training such a stipulation could not have been put forth by the respondent Bank in the appointment letter. They could not have also compelled the petitioner and the guarantor to sign the bond in that regard. He stated that Supreme Court in various judgments held that if the employer has actually spent money in training and the training being such that the employee otherwise would not have received as a result of his employment or the work he undertakes, the amount spent to enhance or impart new skills over and above what an employee would otherwise be expected to know or learn in the position that he holds in the Company and there is breach of contract by the employee, the liquidated damages as stipulated in the contract or the bond may become payable by the employee to compensate the organization for the time and money spent on the training. He would state that legal injury to an employer can be presumed where an employer establishes that the employee was the beneficiary of any special favour or training or compensation at the expense of the employee or there has been breach of contract by the beneficiary of the same. He stated that it is not the case here. He also stated that the compensation should not exceed the amount, if any stipulated in the contract and should not be imposed by way of a penalty. The damages cannot automatically be granted because the employment contract executed shows so.

In order to ensure that liquidated damages or compensation are granted by the Court, the organization may have to prove the loss incurred because of the employee's earlier departure from the service. In substance, it was his submission that the employment bond stipulating a specified sum as payable by the employee in case of breach of contract is enforceable only if employer has actually spent money on the employee against a promise from the employee that he or she should not leave the employment for the specified duration and has consequently suffered loss on account of the employee having received the training and leaving the employment before a stipulated period in breach of employment bond / contract. He would rely upon the following judgments in support of his submissions:

1. ***Central Inland Water Transport Corporation Ltd. and Anr. v. Brojo Nath Ganguly and Anr. and other connected matter, (1986) 3 SCC 156.***
2. ***M/s. Sicpa India Ltd. v. Shri Manas Pratim Deb, RFA No. 596/2002 decided by this Court on November 17, 2011.***
3. ***Mr. Milind P. Mane v. Godrej Infotech Ltd. and Ors., Arb. Pet. No. 466 of 2012 and other connected matters decided by the High Court of Bombay on January 16, 2015.***
4. ***Vijaya Bank and Anr. v. Prashant B. Narnaware, W.A. No. 1159 of 2013 decided by the High Court of Karnataka on August 20, 2014.***

**5. *Shri. Prashant B. Narnaware v. Vijaya Bank and Anr.,
W.P. No. 32844/2009 decided by the High Court of
Karnataka on August 8, 2012.***

5. On the other hand, Mr. V. Sudeer, learned counsel appearing for the respondent Bank apart from reiterating the facts had submitted that the petitioner and the guarantor on their freewill without any coercion, duress or compulsion from any quarters has executed the agreement / service bond on May 27, 2015 fully conscious of the consequences. That initially the petitioner has intentionally not produced any proof of his mother's ill-health but later filed records. That the claim of the petitioner seeking exemption from the payment of the amount of Rs.2,00,000/-, is false and by misleading this Court inasmuch as the medical records filed by the petitioner shows the period of illness as August 10, 2015, much after the petitioner submitted his resignation on July 29, 2015. The petitioner was out patient. The illness and the medicines prescribed were for ordinary ailments. That such service contracts are taken in all public and private sector undertakings so as to not to inconvenience the employer and the public, they are required to serve. If people are allowed to walk-in and walk-out as and when they please it would create chaos in service industry and public utility service. He stated no court in the country has found such a stipulation as unfair and unreasonable. It is

his case that the judgments relied upon by the counsel for the petitioner, are not applicable in the facts of this case. He seeks the dismissal of the writ petition.

6. Having heard the learned counsel for the parties, the issue, which arises for consideration is whether the respondent could have denied the relieving of the petitioner from its services on his tendering resignation only on the ground that he has not paid an amount of Rs.3,10,725.89/-. The break-up of the amount is, Rs.2 Lakh as per letter of appointment and the balance of Rs.1,10,725.89/- is on account of pay for three months in lieu of notice, which the petitioner was required to give while resigning. To answer this issue, it is necessary to reproduce the relevant clauses of the appointment letters. The clauses read as under:-

“23. You shall not leave or discontinue your service in the Bank without giving notice in writing, of your intention to leave or discontinue the services or resign. The period of notice required shall be 3 months, i.e., active service of 3 months.

24. If you intend to leave or discontinue the services or resign from the services of the Bank during the probationary period, in addition to the notice as above, you shall reimburse the bond amount of Rs.2.00 lakhs to the Bank, the notional training

expenses and any other expenses that the Bank has incurred on your behalf.”

7. In fact, on the basis of clause 24, the respondent got executed the Agreement/Service Bond with the petitioner and his father as Guarantor, which stipulated as under:-

“1. The Officer hereby agrees to serve the bank under the rules and service conditions of the Bank for a minimum period of 2 years from 1.6.2015 irrespective of the place of posting or subsequent places of transfers which are under the sole discretion of the Bank.

If he/she fails to serve the Bank for the said period for any reason the Officer and the Guarantor hereby jointly and severally agree to pay Rs.2,00,000/- (Rupees two lakhs only) to the Bank by way of compensation and/or liquidated damages on demand by the Bank.”

8. A perusal of the aforesaid clause 24 in the Appointment Letter, it is clear that reimbursement presupposes the respondent incurring expenses on account of training etc. Admittedly, in the case in hand, the petitioner had joined the Bank on June 01, 2015. He went on leave on June 04, 2015 and continued to be on leave till July 27, 2015. He tendered his resignation on July 29, 2015. There was no occasion for the petitioner to undergo training or

the respondent to incur any expenses on training or for that matter, for any reason. The counter-affidavit/written submissions filed by the respondent would reveal that the respondent's claim of Rs.3,10,725.89/- is primarily on account of amount of Bond (Rs.2 Lakh) and three month's salary in lieu of three month's notice (Rs.1,10,725.89/-). If that be so, Rs.2 Lakh amount stipulated could have been only, if against any training or for any other reason expenses have been incurred by the Bank. This cannot include the expenses incurred by the respondent Bank for carrying out the process of appointment including advertisement, which resulted in the appointment of the petitioner or for that matter incurring expenses in future for making appointment against the vacancy arisen because of his resignation. That apart, the terms of the Bond cannot be at variance with the terms of appointment. The same stipulated the amount to be claimed if any training is given or any expenses incurred which is not the case of the respondent. Hence, without going into the aspect whether the stipulation was unconscionable or not, keeping in view the peculiarity of the facts of this case that the petitioner immediately on his joining resigned from the Bank without undergoing any training, the respondent should have relieved the petitioner from the Bank's services.

9. I may state here, Clause 24 of the appointment letter stipulates that the petitioner could leave or discontinue his services by giving a three month's notice or in the alternative active service of three months. In other words, if an Officer does not intend to continue, he has to give three month's salary in lieu of notice of three months. The petitioner is bound by the said condition and was required to give notice of three months. As he has not given, the respondent is within its right to make a claim in that regard.

10. In view of my discussion above, the judgments referred to by learned counsel for the petitioner would not be relevant.

11. Accordingly, the petitioner shall tender an amount of Rs.1,10,725.89/- within four weeks from the date of receipt of this order, and the respondent on receipt of the same shall relieve the petitioner w.e.f the date of his resignation letter. The letter dated August 04, 2015 is set aside to the extent of claim of Rs. 2,00,000/- (Rupees Two Lakhs only). The petition is disposed of. No costs.

V. KAMESWAR RAO, J

DECEMBER 22, 2017/ak