

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.13239 OF 2001

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the order dated 24.1.2000 passed by the 1st respondent and the order passed by the 3rd respondent vide letter dated 2.5.2000 as arbitrary and illegal, and consequently, to direct the respondents to reinstate the petitioner into service with all consequential and attendant benefits including increments and promotion.

2. Heard Sri B. Nalin Kumar, learned Counsel for the petitioner, Sri B. Sree Ramulu, learned Standing Counsel for Syndicate Bank and Sri Deepak Bhattacharjee, learned Counsel for the 1st respondent.

3. The case of the petitioner in brief is as follows:

(i) The petitioner joined in the respondent-Bank on 28.3.1991 as clerk-cum-cashier at Boddam Branch in Srikakulam District. Subsequently, she was transferred to Visakhapatnam main branch in June, 1991 and she worked there till May, 1998 and thereafter, she was transferred to Koheda Branch in Ranga Reddy District on her request.

(ii) Due to illness of her mother-in-law, the petitioner could not attend duty and she informed the same to the Manager on

4.6.1999 and she also sent telegram on 8.6.1999 requesting to grant leave. But the 4th respondent without considering the same issued a telegram on 7.6.1999 calling upon her to join duty, and he also addressed a letter alleging that the petitioner was unauthorizedly absent from 31.5.1999. While so, on the ground that her mother-in-law expired on 18.7.1999, the petitioner addressed a letter to the 4th respondent on 21.7.1999 to grant leave. The 4th respondent through a letter informed that her leave applications were rejected and her absence from 31.5.1999 was treated as unauthorized. She sent letters to grant leave on loss of pay along with an application for transfer. But the respondents without considering her request, informed through letter dated 30.9.1999 purporting to initiate disciplinary action for her unauthorized absence.

(iii) On 3.12.1999 the Deputy General Manager issued charge sheet to the petitioner, for which she submitted an explanation. However, the Deputy General Manager issued order dated 24.1.2000 purporting to state that the petitioner voluntarily retired from service under Clause XVII of 5th Bi-Partite settlement. Aggrieved by the same, the petitioner preferred an appeal on 12.4.2000. The said appeal was rejected vide letter dated 2.5.2000. Hence, the petitioner filed this writ petition.

4. The learned Counsel for the petitioner contends that the petitioner had absented herself from duties owing to the

circumstances beyond her control and she applied for leave from time to time, but her leave applications were rejected, and charge sheet was issued on 3.12.1999, for which she submitted a detailed explanation on 12.1.2000, but the respondents without considering the same and without conducting any enquiry passed the order of voluntary retirement vide order dated 24.1.2000 by invoking clause 17 of the 5th Bi-Partite settlement, and aggrieved by the order of voluntary cessation of service, the petitioner preferred appeal before the appellate authority on 12.4.2000, but the said appeal was rejected vide order dated 2.5.2000.

5. Learned Counsel for the petitioner further contends that the 5th Bi-Partite settlement, under which the impugned orders were passed, has no application whatsoever, and that the petitioner sought for sanction of leave due to ill health of her mother-in-law, but the respondents rejected the same on one pretext or the other for the reasons best known to them, and that the orders impugned are not sustainable under law and therefore, the same are liable to be set aside.

6. Learned Standing Counsel for the Syndicate Bank submits that the petitioner absented herself unauthorizedly without following rules and caused inconvenience to the smooth functioning of the Branch and she did not adhere to the leave rules

and even she did not report for duty when it was informed that her request for leave was rejected. He further contends that as the petitioner remained absent for more than 90 days continuously without prior sanction of leave, a notice of Voluntary Cessation of employment under Clause 17 of Bi-Partite Settlement was issued to the petitioner on 30.11.1999, and an opportunity was also given to her to join duty within 30 days, but she did not join duty and therefore, the authorities are constrained to pass the impugned orders.

7. This Court has considered the submissions made by both the parties and perused the material available on record. While drawing the attention of this Court to Clause 17 of the 5th Bi-Partite Settlement, the learned Counsel for the petitioner submits that the order of Voluntary Cessation of her services is contrary to Clause 17 of the 5th Bi-Partite Settlement dated 10.4.1989. The said Clause 17 reads as follows:

“Voluntary Cessation of Employment by the Employees:

The earlier provisions relating to the voluntary cessation of employment by the employee in the earlier settlements shall stand substituted by the following:

(a) *When an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/ subsequently or when there is a satisfactory evidence that he has taken up employment in India or*

when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating inter alia the ground for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.

(b) *When an employee goes abroad and absence himself for a period of 150 or more consecutive days without submitting any application for leave, or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/ subsequently or when there is a satisfactory evidence that he has taken up employment outside India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating, inter alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the*

said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.

(c) If an employee again absents himself within a period of 30 days without submitting any application after reporting for duty in response to the notice given after 90 days or 150 days absence, as the case may be, the second notice shall be given after 30 days of such absence giving him 30 days time to report. If he reports in response to the second notice, but absents himself a third time from duty within a period of 30 days without application, his name shall be struck off from the establishment after 30 days of such absence under intimation to him by registered post deeming that he has voluntarily vacated his appointment."

It is also submitted that the clause of the Bi-Partite settlement cited supra was subsequently clarified during January, 1990 as follows:

"Voluntary Cessation of service- (1) *Clause 17 of the settlement will apply only in cases of desertion i.e., where there is absence from duty without any intimation. If there is an intimation from the employee but the absence is unauthorized otherwise, the Bank should take action in terms of disciplinary procedure laid down in previous settlements and not in terms of Clause 17 of the Fifth Bi-Partite Settlement."*

8. Relying upon the above clarification, the learned Counsel for the petitioner contends that whenever an employee submits a leave application, the bank cannot invoke clause 17 of the 5th Bi-Partite settlement. In the instant case, the petitioner made several

applications for leave and therefore, the order of voluntary Cessation of the services of the petitioner under Clause 17 of the 5th Bi-Partite settlement is illegal and arbitrary.

9. Further, the learned Counsel for the petitioner submits that 5th Bi-Partite Settlement was followed by 6th and 7th Bi-Partite settlements, and in the 7th Bi-Partite settlement, which has come into force with effect from 1.11.1997, clause 17 of the 5th Bi-Partite settlement has been deleted. Further, it has been submitted that though 7th Bi-Partite settlement was signed on 27.3.2000, its operation is retrospective with effect from 1.11.1997 and the 7th Bi-Partite settlement was holding the field when the impugned order of voluntary cessation order was passed by the respondents, and therefore, the impugned order is liable to be set aside on two grounds firstly, as the petitioner submitted leave application for her absence from time to time, the respondent-bank ought not to have passed order of voluntary cessation of service dated 24.1.2000 by invoking clause 17 of 5th Bipartite settlement, which clause was not in operation in the year 2000, and secondly, on the ground that even though the petitioner submitted her explanation for the charge sheet issued to her, without considering the same and without conducting any enquiry, the order of voluntary Cessation was passed by invoking non-existent clause No.17 of the 5th Bi-Partite Settlement.

10. This case was adjourned from time to time so as to enable the learned Standing Counsel for the Bank to clarify as to whether Clause 17 of the 5th Bi-partite Settlement was in existence when the impugned order of voluntary cessation was passed or not. But the learned Standing Counsel for the Bank could not place any material to demonstrate that clause 17 of the 5th Bi-Partite settlement was in existence when the impugned order of voluntary Cessation was passed. Therefore, it cannot be said that there is no force in the contentions raised by the learned Counsel for the petitioner.

11. Having regard to the submissions made by both the parties and the circumstances of the case, this Court is of the considered view that the impugned order dated 24.1.2000 passed by the 1st respondent-Deputy General Manager, and the order passed by the 3rd respondent-Assistant General Manager vide letter dated 2.5.2000 rejecting the appeal filed by the petitioner and confirming the order passed by the 1st respondent are liable to be set aside.

12. Accordingly, the Writ Petition is allowed setting aside the order dated 24.1.2000 passed by the 1st respondent-Deputy General Manager, and the order passed by the 3rd respondent-Assistant General Manager vide letter dated 2.5.2000. However, this order does not preclude the respondent-Bank to initiate disciplinary proceedings and conduct enquiry against the petitioner for her

absence after following due procedure, and pass appropriate orders in accordance with law. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 23rd August, 2018.
Nn.



HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.13239 OF 2001



23/08/2018

Nn.