

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.4882 OF 2001

ORDER:

Petitioner-employee filed this Writ Petition seeking to issue a Writ of *Certiorari* calling for the records relating to I.D.No.26 of 1997 of the first respondent-Labour Court whereby his petition was dismissed without granting any relief and to quash the same as illegal and arbitrary.

Brief facts of the case are that the petitioner was appointed as a probationary clerk in the respondent-Bank by an order dated 03.02.1972. His services were confirmed w.e.f. 17.08.1972. After confirmation, he was transferred to Vizianagaram Branch on 26.08.1972 where he worked up to 05.07.1975. Again he was transferred to Secunderabad main branch and from there to Pattargati branch on 03.08.1977 and then he was sent to Begum Bazar on deputation from 15.12.1977. He was the Secretary of the Syndiate Bank Employees Co-operative Housing Society Limited for a period of three years. He went on leave from 15.10.1981 to 16.03.1982 as his presence was required in connection with the audit work of the Housing Society. While so, he received a message from Visakhapatnam stating that his wife was suffering from psychiatric ailment due to death of their daughter. In such circumstances, petitioner had to be continuously away from duty. However, the petitioner was informing the authorities about his absence and consequential extension of leave from time to time. The Assistant General Manager sent a letter dated 16.03.1982 to the petitioner advising him to join duty within seven days. Having received the said letter on 24.03.1982, the petitioner sent a

telegram seeking extension of another seven days. On expiry of leave period by 06.04.1982, petitioner returned to duty on 07.04.1982, but he was not allowed to join duty on the ground that he was already terminated from the service. The petitioner made a representation to the General Manager on 03.06.1982 explaining the reasons for his absence and requested to revoke the order. He sent another representation on 26.12.1983. But, there was no response. While so, vide proceedings dated 26.04.1982 the services of the petitioner were terminated w.e.f.15.10.1981 by invoking the provisions under Bipartite Settlement. The petitioner was terminated without any notice and enquiry and contrary to the bipartite settlements. The petitioner raised Conciliation proceedings before the Assistant Commissioner of Labour. On failure, in view of Amendment Act, 1987, petitioner raised an Industrial Dispute in I.D.No.90/1990 under Section 2-A (2) of the Industrial Disputes Act, before the Labour Court-I, Hyderabad. Later, the same was transferred to Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, and re-numbered as I.D.No.269/1993. Vide proceedings dated 11.05.1994, said I.D. was returned with a direction to approach the concerned Conciliation Officer of the Central Government for reference of the dispute to the Court as the petitioner was a bank employee. Accordingly, the petitioner initiated conciliation proceedings before the Central Labour authorities. On failure of the Conciliation proceedings, the issue was referred to the Industrial Tribunal-I at Hyderabad vide reference No.L-12012/108/96/IR(B-II) dated 15.05.1997 of the Government of India, Ministry of Labour, New Delhi, under clause (d) of sub-section (1) and sub-section 2 (A) of

Section 10 of the Industrial Disputes Act, 1947, for adjudication of the following dispute:

- 1) Whether the action of the Management of Syndicate Bank, Hyderabad is justified in imposing punishment of termination from services of Shri B.J.J.Raju, Ex-Clerk with effect from 15-10-1981? If not, to what relief he is entitled to?"

The said reference was numbered as I.D.No.26/1997 wherein the petitioner filed claim statement and respondents filed counter. During enquiry, petitioner himself got examined as WW.1 and marked Exs.W-1 to W-13. The Management got examined MW.1 P.Panakala Rao and marked Exs.M1 to M.8. The Industrial Tribunal after considering the entire evidence on record, held that when the petitioner was on leave, he was sent with Ex.W-3 - Intimation dated 16.03.1982 by the bank to join duty. But due to his inability he could not report and sent Ex.W-4 - telegram on 24.03.1982. Thereafter when he returned to duty he was not allowed to join for duty and he was terminated from service w.e.f.15.10.1981 vide Ex.W-5-Termination Order dated 26.04.1982 whereas the Chief General Manager examined as M.W.1 states that he was absent from duty without sanction of leave. Ex.W-3 letter dated 16.03.1982 was sent to the workman to join duty within seven days for which he has sent Ex.M-5 telegram for extension of time to report duty, which was duly considered and time was extended up to 12.04.1982. But, the petitioner did not join duty even on or before 12.04.1982. As such, the Bank passed an order Ex.M-5 treating that the petitioner seized to be in service from 15.10.1981 as per Ex.M.7. Further, WW-1 was in the habit of absenting from duty for which he was also issued notice Ex.M-1. Ex.M.2 in the charge sheet and Ex.M.3 is the Warning Letter

issued to the petitioner and Ex.M.4 is another absence memo, Ex.M.6 is the telegram issued by the bank and asking the petitioner to join duty on or before 12.04.1982. After perusal of the entire evidence, both oral and documentary, available on record, the Industrial Tribunal held that no domestic enquiry is required for termination of the employee as unauthorized absence would amount to abandonment of service as per the Bipartite Settlements; the petitioner was in unauthorized absence and without wages on account of his indulgence in attending to the Co-operative Housing Society's work, which is nothing to do with the responsibilities and obligations which he has to discharge in his service; petitioner cannot stay away from the service unauthorizedly causing disruption of the bank works. The Labour Court dismissed the petition without answering the reference by proper appreciation of the material on record.

Sri G.Ravi Mohan, learned counsel for the petitioner, would contend that the petitioner was appointed as a Probationary clerk in the third respondent-Bank on 03.02.1972. Thereafter, his services were confirmed w.e.f.17.08.1972. Subsequently, he was transferred to Vizianagaram on 26.08.1972, from there to Secunderabad main branch and later he was sent on deputation to Begum Bazar on 15.12.1977. Petitioner applied for leave from 15.10.1981 to 16.03.1982. During the leave period, he received a message from Visakhapatnam stating that his wife suffered from psychiatric ailment. Thus, he went to attend his wife and he informed the authorities about his absence and consequential extension of leave. He sought consequential extension of leave as per his entitlement from time to time. The Assistant General

Manager sent a letter to him on 16.03.1982 advising to join duty within seven days from the date of receipt of the said letter, which was received by the petitioner on 23.04.1982. Immediately, petitioner sent a telegram seeking extension of leave for seven days. The said leave also expired on 06.04.1982 and he returned to duty on 07.04.1982, but he was not allowed to join duty stating that a letter was sent to the petitioner indicating their stand, however the said communication was not received by the petitioner. However, the petitioner was terminated from service by proceedings dated 26.04.1982 w.e.f.15.10.1981 in purported exercise of power under Bipartite Settlement, but the petitioner voluntarily ceased to be employee of the bank for his unauthorized absence and without any notice and without conducting any enquiry.

Learned counsel would mainly contend that Bipartite Settlement-I & II, which were in operation upto 31.08.1982, are applicable to the petitioner's case. As per the applicable Bipartite Settlements, there is no clause for voluntary cessation of employment by the employee for unauthorized absence. Even the clause of 'voluntary cessation of employment by the employer for unauthorized absence' was introduced by the third Bipartite Agreement, which came into force w.e.f.26.12.1983 and thereafter the said clause was deleted in the 7th Bipartite Settlement w.e.f.01.04.2000. Hence, the petitioner could not be terminated from service for unauthorized absence by invoking the clause 'voluntary cessation of employment' because the said clause was introduced through Bipartite Settlement-III, which came into force w.e.f. 26.12.1983, and the same could not be made applicable to

the petitioner. Petitioner ought not have terminated from the services without notice or enquiry and without giving opportunity to defend him and contrary to the principles of natural justice. Hence, the termination of the petitioner from service w.e.f.15.10.1981 by proceedings dated 26.04.1982 is illegal. The Labour Court has not considered the evidence before it and erred in holding that the petitioner was unauthorizedly absent for which the Bank has invoked the clause of 'voluntary cessation of employment' under Bipartite Settlement and petitioner has unauthorizedly absent and thereby disrupted the functioning of the Bank.

Learned counsel would further submit that the Labour Court also erred in holding that the petitioner has approached after 13 years to declare his termination as illegal, is contrary to the evidence available on record. The Industrial Tribunal failed to consider that initially the petitioner approached the Conciliation Officer and on failure of the conciliation proceedings, the Conciliation Officer submitted the failure report to the Government and the Government referred the matter to Industrial Tribunal under Section 10 of the I.D. Act. Pending Reference, in view of Amendment Act, 1987 as per Section 2-A (2) thereof, the workman is entitled to raise Industrial Dispute directly before the Labour Court. Accordingly, the petitioner filed application under Section 2-A (2) of the I.D.Act and the same was numbered as I.D.No.90/1990. Thereafter, the case was transferred to the Additional Industrial Tribunal, re-numbered as I.D.No.269/1993 and on 11.05.1994 the same was returned to the petitioner to approach the concerned Conciliation Officer of the Central

Government for referring the dispute to the Court. Thereafter, the petitioner approached the Conciliation Officer through the State Secretary, Syndicate Bank Employees' Union, Hyderabad and on Conciliation Officer's failure report to the Central Government, the Central Government referred the dispute to the Labour Court vide reference dated 15.05.1997. The reference was not objected or disputed by the employer. The said reference was numbered as I.D.No.26 of 1997 on the file of the Industrial Tribunal-I, Hyderabad. Hence, the finding of the Labour Court that the petitioner raised the dispute after lapse of 13 years and there are latches on the part of the petitioner is erroneous and contrary to the evidence available on record. Hence, the award of the Labour Court is bad in law.

Learned counsel also submits that for unauthorized absences, the petitioner at best could be imposed minor punishment as per the first and second Bipartite Settlements as envisaged under clause 19.8 thereof, but terminating the services of the petitioner with retrospective effect by invoking clause 'voluntary cessation of employment for unauthorized absence' which clause is not at all available to the respondent-Bank in respect of petitioner's case as the same was introduced in the third Bipartite Settlement, which came into force from 26.12.1983, which has no retrospective effect, is erroneous. Hence, the petitioner is entitled for reinstatement with continuity of service and back wages by setting aside the award of the Labour Court and termination order. He would further submit that as the petitioner has crossed the age of superannuation, in lieu of reinstatement with continuity of service and back wages, a

lumpsum amount may be granted as compensation to the petitioner as the petitioner was not gainfully employed after termination and he was put to severe financial difficulties.

Per contra, Sri Deepak Bhattacharjee, learned counsel for the respondent-Bank, would contend that the petitioner went on leave from 15.10.1981 to 16.03.1982 and the the Assistant General Manager sent a letter on 16.03.1982 advising to join duty within seven days. After receiving the same on 23.04.1982, the petitioner has sent a telegram seeking extension of time for seven more days. The said extension period was expired on 06.04.1982 and till such date the petitioner has not joined duty. As such, he was terminated from service by order dated 26.04.1982 w.e.f.15.10.1981 invoking the clause 'voluntary cessation of employment by the employees' for unauthorized absence envisaged under the third Bipartite Settlement, which came into force on 26.12.1983 with retrospective effect for which no notice or no enquiry is required to remove the employee under clause 'voluntary cessation of employment for unauthorized absence'. Considering the same, the Labour Court on appreciation of the evidence available before it and based on the record rightly held that the petitioner was unauthorizedly absent and petitioner's absence caused disruption to banking activity and the petitioner approached the Additional Industrial Tribunal after 13 years and hence the petitioner is not entitled for any relief.

Learned counsel placed reliance on ***Punjab & Sind Bank vs. Sakattar Singh***¹ and ***Syndicate bank vs. General Secretary***

¹ 2001 (1) SCC 214

Syndicate Bank Staff Association² wherein it is held that when the employee is terminated under para 16 of the Bipartite Settlement under the clause of 'voluntary cessation of employment for unauthorized absence' no notice or enquiry is required when there is an agreement between the Bank and Union to terminate the services of the employees by invoking clause of 'voluntary cessation for unauthorized absence'. As such, termination would not be held illegal for non-issuance and enquiry, but the employee who challenged the order was terminated on 19.12.1985 for which third Bipartite Settlement and clause 16 thereof 'voluntary cessation of employment for unauthorized absence' is applicable whereas in the present case, the termination was in the year 1982 w.e.f.15.10.1981. Under the relevant Bipartite Settlement i.e. Bipartite Settlements 1 and 2, there is no clause of 'voluntary cessation of employment for unauthorized absence'. Hence, the said two decisions are not applicable to the facts of the present case.

In reply, learned counsel for the petitioner would contend that there is no delay of 13 years much less unexplained delay to construe that the petitioner approached the Industrial Court after 13 years and the said conclusion of the Industrial Tribunal has no basis and is untenable for which he relied on the judgement reported in **Ajaib Singh vs. Sirhind Cooperative Marketing-cum-Processing Service Society Limited**³ wherein the Hon'ble Supreme Court held that if the delay causes real prejudice to the workmen and their rights and if the delay is properly explained, the Labour Court can consider the delay in the light of the

² AIR 2000 SC 2198

³ (1999) 6 SCC 82

provisions on the Industrial Tribunal Act and even the long delay in seeking reference in view of termination of service has to be condoned and the termination of the employee has to be decided on merits.

In the facts and circumstances of the case and in considered view of this Court, the Industrial Tribunal has grossly erred in holding that the petitioner was on unauthorized absence and he was terminated from service by the Bank invoking clause 16 of the third Bipartite Settlement under 'voluntary cessation of employment for unauthorized absence' for which no notice or enquiry is required for terminating the services. For better adjudication of the matter, relevant clauses under First and Second Bipartite Settlements, which are applicable to the petitioner's case are extracted hereunder:

19.7. By the expression 'minor misconduct' shall be meant any of the following acts and omissions on the part of an employee:

- (a) absence without leave or overstaying sanctioned leave without sufficient grounds;
- (b)

For the 'minor misconduct', punishment is enumerated in clause 19.8, which reads as follows:

19.8. An employee found guilty of minor misconduct may:

- (a) be warned or censured; or
- (b) have an adverse remark entered against him;
or
- (c) have his increment stopped for a period of not longer than six months.

Clause 19.12, which provides for procedure to be followed to impose punishment, is as follows:

19.12 The procedure in such cases shall be as follows:

(a) An employee against whom the disciplinary action is proposed or likely to be taken shall be given a charge sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation so also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the Officer conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witness and produce other evidence in his defence. He shall also be permitted to be defended –
.....

Clause **19.15** stipulates that every employee who is dismissed or discharged shall be given a service certificate, without avoidable delay.

On a conjoint reading of the above referred clauses with the facts of the present case, this Court is of the view that the Industrial Tribunal ought to have seen that under the First and Second Bipartite Settlements, which are applicable to the petitioner's case, the unauthorized absence of the petitioner comes under 'minor mis-conduct' stipulated under clause 19.7 for which the punishments are enumerated under clause 19.8 according to which the maximum punishment which can be imposed on the petitioner is 'deferment of increments for a period not longer than six months'. But, the Industrial Tribunal carried away by the

submissions of the respondent that under Third Bipartite Settlement, for unauthorized absence, the petitioner is liable to be terminated. Clause 16 of the third Bipartite Settlement 'voluntary cessation of employment for unauthorized absence' is not applicable to the petitioner's case as the same was introduced under third Bipartite Settlement which came into force from 26.12.1983 and the same has no retrospective application. Based on such untenable submissions of the respondent, the Industrial Tribunal held that termination of petitioner from service is legal and the petitioner is not entitled for any relief. The Labour Court instead of answering the reference, based on the evidence on record, on mere surmises and conjectures without therebeing any legal evidence against the petitioner for unauthorized absence and contrary to the leave regulations of the bank instead of holding the termination is illegal as the third Bipartite Settlement is not applicable and termination of the petitioner under clause 'voluntary cessation of employment for unauthorized absence' is illegal, the Tribunal otherwise held that the petitioner is not entitled for any relief, which is contrary to the evidence available on record and applicable first and second Bipartite Settlements.

As regards delay, it is evident from the material on record that at the first instance the petitioner initiated Conciliation proceedings before the Assistant Commissioner of Labour. On failure and pending reference, in view of Amendment Act, 1987, petitioner raised Industrial Dispute No.19 of 1990 and the same was returned with a direction to approach the concerned Conciliation Officer. Again the petitioner initiated conciliation proceedings and on failure of the conciliation proceedings, the

issue was referred by the Government to the Industrial Tribunal. In those circumstances, there was a delay of 13 years in approaching the Tribunal and when the delay is explained properly and when no prejudice is caused to the employer, the delay can be condoned for justifiable grounds, as held by this Court and the Hon'ble Supreme Court in catena of judgments, in particular in **Ajaib Singh (3 supra)**. The Tribunal failed to appreciate the said facts and on erroneous appreciation of facts, held that there is a delay of 13 years in approaching the Tribunal.

For the reasons stated supra, the impugned award and the termination of the petitioner are liable to be set aside and are accordingly set aside.

Hence, the Writ Petition is allowed setting aside the award dated 25.09.2000 passed by the Industrial Tribunal, Hyderabad, in I.D.No.26 of 1997 and the termination orders dated 26.04.1982 passed by the respondent-bank. In view of petitioner's attaining the age of superannuation in the year 2006, he could not be reinstated into service with continuity of service and back wages. In the facts and circumstances of the case, this Court feels it is just and proper to award *lump sum* amount equivalent to 50% of the back wages in *lieu* of his reinstatement, with continuity of service and back wages as his termination is declared as illegal. The respondent-Bank is directed to pay the said amount to the petitioner within a period of two months from the date of receipt of a copy of this order. In default, the petitioner is entitled for interest @ 9% per annum till the date of realization of the amount.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

11th July, 2018
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