

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.22440 OF 2001

ORDER:

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with the award dated 8.5.2001 in I.D.No.28 of 1998 on the file of the Labour Court, Hyderabad, and to quash the said award.

2. Heard Sri K. Lakshminarayana, learned Counsel for the petitioner and Sri G. Vidya Sagar and Smt. K. Udayasri, learned Counsel for the 3rd respondent.

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

While the 3rd respondent was working as Staff-clerk-Agricultural Assistant at Hyderabad Main Branch of the petitioner, he was absent from duty continuously without leave for a period of more than 200 days. The notices issued by the petitioner were returned unserved. Ultimately, the petitioner issued a notice on 12.11.1992 to respondent No.3 in terms of Clause 17 of Memorandum of Settlement between the Management of the Bank and the 3rd respondent-workman, dated 10.4.1989. But the 3rd respondent failed to report to duty. Then, the Zonal Manager, A.P. Zone issued order dated 22.12.1992 stating that the 3rd respondent should be deemed to have voluntarily retired from service with effect from the date of notice period, and he would cease to be in

service of the Bank. Challenging the same, the 3rd respondent filed I.D.No.28 of 1998 before the Labour Court. The Labour Court allowed the I.D. in part directing reinstatement of the 3rd respondent into Bank service, without back wages and without continuity of service from 20.4.1992 to 7.6.1998. Aggrieved by the same, the petitioner-Bank filed this writ petition.

4. Learned Counsel for the petitioner contends that the Labour Court while observing that the 3rd respondent did not submit any representations for more than 3 years after passing of final orders by the Bank and the 3rd respondent had shown negligence on his part, erroneously held that the petitioner had not issued any charge sheet in respect of the absence of the 3rd respondent and that the Bank had not conducted any enquiry before passing final orders. He further contends that the 3rd respondent was continuously absent for 200 days without any application for leave and he absented himself without any explanation and he received both show cause notice as well as final order of Cessation from service and he filed the application before the Labour Court after five and half years of passing of Cessation order and therefore, the 3rd respondent is not entitled to be reinstated into service.

5. The learned Counsel for the petitioner further contends that the petitioner-Bank is a nationalized bank under the Administrative

Control of Government of India and the appropriate Government is the Central Government and under the amended provisions of Section 2-A (2) of the Industrial Disputes Act, the 3rd respondent should not have filed I.D. before the Labour Court and the Labour Court should not have entertained the I.D and passed the award in favour of the 3rd respondent.

6. Yet another contention raised by the learned Counsel for the petitioner is that the petitioner had exercised its power under Clause 17 of the Bi-Partite Settlement between the petitioner-Bank and the Workmen dated 10.4.1989, and after following the procedure as contemplated under clause 17 only, the petitioner had passed the voluntary cessation order dated 22.12.1992, and the petitioner had not committed any illegality.

7. The learned Counsel for the 3rd respondent-workman contends that he was appointed as an agricultural assistant on 18.6.1984 after undergoing regular selection process, and during 1992, his father expired and thereafter, certain family disputes arose, consequent upon which, he absented himself for the reasons beyond his control, and that the petitioner-Bank ought not to have invoked clause 17 of the 5th Bi-Partite settlement and passed orders of Voluntary Cessation dated 22.12.1992. He further contends that if the 3rd respondent-workman absented himself the petitioner-Bank

ought to have initiated disciplinary proceedings and thereafter only, the petitioner ought to have severed the services of the 3rd respondent-workman, and that the action of the petitioner-Bank in invoking clause 17 of the 5th Bi-Partite settlement and in passing the orders of voluntary cessation is arbitrary and illegal, and that the Labour Court has rightly passed the award impugned setting aside the order of voluntary cessation dated 22.12.1992 and directing reinstatement of the 3rd respondent-workman.

8. The learned Counsel for the 3rd respondent further contends that the petitioner has filed this writ petition and obtained stay of the award passed by the Labour Court on 30.10.2001, subject to the payment of wages, and by virtue of the said interlocutory orders, the petitioner-Bank resisted the reinstatement of the 3rd respondent-workman, but however, the 3rd respondent-workman is being paid wages under Section 17-B of the Industrial Disputes Act, and the 3rd respondent is going to be retired in the month of September, 2018 on attaining the age of superannuation.

9. The learned Counsel for the 3rd respondent-workman contends that the unauthorized absence of the 3rd respondent comes under minor misconduct and therefore, the punishment of cessation of service is very disproportionate and that when the termination of employee was challenged, the same has to be

decided on merits but not on the ground of technicalities and delay, and that the Labour Court has considered all the aspects and rightly granted relief in favour of the 3rd respondent and that the award impugned does not warrant any interference by this Court.

10. This Court has considered the rival submissions made by both the parties and perused the material available on record. It is the case of the petitioner that the order of voluntary cessation was passed in terms of the 5th Bi-Partite Settlement. Clause 17 of the said Bi-Partite Settlement 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.”

The above clause of the Bi-Partite settlement cited supra was subsequently clarified during January, 1990. The said clarification reads 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.”

11. The above clarification to Clause 17 of Bi-Partite Settlement makes it abundantly clear that whenever an employee was absent himself from duty without any intimation, then the Bank can invoke clause 17 of the Bi-Partite Settlement.

12. Coming to the case on hand, from the material on record, it is obvious that the 3rd respondent-workman had not informed the petitioner-bank about his absence by submitting proper leave application. If the 3rd respondent-workman had informed the petitioner-Bank by way of leave letter, the petitioner-Bank would not have initiated any proceedings by invoking clause 17 of the 5th Bi-Partite settlement. Admittedly, in the instant case, the 3rd

respondent-workman was absent from 20.4.1992 without any leave application. The 3rd respondent-workman made a call to the petitioner-bank on 22.4.1992 and informed that he would be reporting to duty within two days. But he failed to do so. Then, the Bank had waited for another 15 days and addressed a letter to the 3rd respondent-workman on 9.5.1992 directing him to report for duty. But there was no response from the workman. Thereafter, after more than one month, the 3rd respondent-workman vide letter dated 9.6.1992 informed the bank that he met with an accident and he would be reporting to duty on 24.6.1992. But he did not report to duty. The 3rd respondent-workmen went on each and every time informing the petitioner-Bank that he would report to duty. Finally, as there was no other option, the petitioner issued notice dated 12.11.1992 informing the 3rd respondent-workman that if he fails to report to duty within 30 days of the notice, then after expiry of 30 days, the 3rd respondent's services would be deemed to be treated as voluntary cessation under Clause 17 of the 5th Bi-Partite settlement. Thereafter, the 3rd respondent-workman failed either to report to duty or to give explanation for his absence.

13. The learned Counsel for the 3rd respondent-workman contends that cessation of service amounts to retrenchment and before retrenching an employee, the Bank ought to have followed the procedure contemplated under Section 25-F of the Industrial

Disputes Act. In support of his contention, the learned Counsel for the 3rd respondent-workman relied upon the judgment reported in **T. Venkateswarlu Vs. Branch Manager, State Bank of India, Vijayawada and another**¹. This judgment is not applicable to the present case as the petitioner-Bank invoked Clause 17 of the 5th Bi-Partite settlement, which is binding on the parties including the petitioner and all the employees of the petitioner-Bank.

14. The learned Counsel for the 3rd respondent-workman also relied on the judgment reported in **L. Robert D' Souza Vs. Executive Engineer, Southern Railway and another**². This judgment also would not have any application in the present case. In that case, it was held that the termination on the ground of absence without leave, without complying with minimum principles of natural justice, would not be justified. In the instant case, the Bank had invoked clause 17 of the 5th Bi-Partite settlement after giving several opportunities to the 3rd respondent-workman to come and join duty. In spite of several opportunities being given for more than 8 months, the 3rd respondent-workman has not reported to duty. Now, he cannot turn around and contend that the bank has taken unilateral decision and passed order of voluntary cessation of services.

¹ 1989(3) ALT 549

² (1982)1 SCC 645

15. Whereas the learned Counsel appearing for the petitioner has taken an objection that the 3rd respondent-workman should not have filed I.D. by invoking Section 2 A (2) of the I.D. Act before the Labour Court as the petitioner is a nationalized bank under the control of Government of India. This Court has already dealt with this issue in a case reported in **Chinnappa Vs. Cotton Corporation**³ and held as follows:

“The next aspect is whether the operation of sub-section (2) of Section 2-A shall be confined only to the workmen employed in the industrial undertakings of the State Government, as interpreted by the Labour Court or it would govern all workmen irrespective of whether he is a workman engaged in an industry run by or under the authority of the Central Government or the State Government or any other industry located in the State. We find no warrant to restrict the scope and amplitude of the wide phraseology “any workman” employed in sub-section (2) of Section 2-A of the Act so as to hamper the right of any workman who was discharged, dismissed, retrenched or terminated from employment or service. We do not think that any incongruity or anomaly would result by applying sub-section (2) to the cases of discharge, dismissal, termination or retrenchment of the workmen employed in an industry run by or under the authority of the Central Government. On the other hand, the purpose of the Act will be better served in placing an interpretation that it would apply to all categories of workmen. It is to be remembered that the State Government is as much concerned as the Central Government with the maintenance of industrial peace and welfare of the workmen. That is why the subject of Labour and Industrial disputes is assigned to the Concurrent List. Within the State, there need not be diversity approach in the matter of providing remedies to the aggrieved workmen. There is no good reason why the ambit and operation of Section 2-A should be restricted only to the workmen other than those employed in an industry run by or under the authority of the Central Government.”

In the light of the above judgment of this Court, the objection raised by the petitioner that the 3rd respondent-workman ought not

³ 1997(3) ALT 556

to have filed an Industrial Dispute by invoking Section 2-A (2) of the Industrial Disputes Act is unsustainable.

16. As stated supra, the 3rd respondent-workman neither submitted any leave applications for his absence nor gave any reply to the notice issued by the petitioner-Bank on 12.11.1992. Therefore, this Court is of the view that the petitioner-Bank was right in invoking clause 17 of the 5th Bi-Partite settlement and in passing the order of voluntary cessation of service of the 3rd respondent-workman vide proceedings dated 22.12.1992. Therefore, the Writ Petition deserves to be allowed and the award passed by the Labour Court is liable to be set aside.

17. Accordingly, the Writ Petition is allowed setting aside the award of the Labour Court dated 8.5.2001 in I.D.No.28 of 1998 and confirming the order of voluntary Cessation of service of the 3rd respondent-workman, dated 22.12.1992. 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.22440 OF 2001



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Nn.