

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.19766 OF 2005

ORDER:

Heard Sri C.Raghu, learned counsel for the petitioner and Sri S.Mujib Kumar, learned Standing counsel for respondents.

This writ petition is filed seeking a Writ of Mandamus declaring the order No.F/Conf/248, dated 26.03.1997 issued by the respondents, as illegal, arbitrary and sought a consequential direction directing the respondents to reinstate the petitioner into service with back wages and continuity of service with all service benefits.

It has been contended by the petitioner that he was initially appointed as Field Officer with the respondent bank during 1987 and while he was discharging his duties as Branch Manager at Suraram Branch, Karimnagar, he applied for casual leave from 16.05.1996 to 18-05-1996 due to some personal issues. The petitioner further contends that thereafter, he suffered with kidney problem and could not join the duty. While so, the respondents have issued impugned order dated 26.03.1997 declaring that he has retired from service voluntarily w.e.f. 16.05.1996 on the ground that he failed to report to duty on 11.03.1997. He further contends that the respondents while issuing the impugned order, followed the Circular dated 22.10.1994, by treating him as awaited staff instead of following the Staff Service Regulations, 1983 (for short 'the Service Regulations') of the Banks, which are applicable to Officer cadre.

Learned counsel for the petitioner contends that the Circular dated 22.10.1994 is applicable to the awaited staff but

not to Officer's rank. Admittedly, petitioner is an Officer and Service Regulations alone would apply to the petitioner. He further contends that the respondents along with the counter affidavit filed Circular dated 22.10.1994 and a perusal of the said Circular discloses that it is only applicable to the staff working as clerk-cum-cashier & messenger-cum-sweepers. He further contends that the respondents without conducting any enquiry and without giving an opportunity to the petitioner, simply by applying the Circular dated 22.10.1994, declared that the petitioner has retired from service voluntarily as a deemed measure, though there is no such provision as per Service Regulations to the regular Officer cadre. He further contends that the petitioner had preferred an appeal before the appellate authority and the appellate authority rejected the said appeal vide order dated 20.07.2005. He further contends that when the respondents are alleging that the petitioner had remained absent unauthorisedly, in all fairness they ought to have given an opportunity and conducted enquiry and thereafter, would have initiated action in accordance with Service Regulations. He further contends that petitioner had submitted medical certificates to the respondents making it clear that due to ill health, he could not join the duties, but the respondents without examining whether the medical certificates submitted by the petitioner are genuine or not, mechanically declared that the petitioner has retired from service voluntarily vide impugned proceedings dated 26.03.1997. Therefore, he contends that appropriate orders be passed in the writ petition directing the

respondents to reinstate the petitioner into service by duly setting aside the impugned order dated 26.03.20017 on the ground that the respondents have applied Circular dated 22.10.1994 which is not applicable to the Officer's cadre. He further contends that since the petitioner has approached the appellate authority with a delay of 7½ years, he is not claiming any back wages for that period, therefore, the appellate authority's order dated 20.07.2005 also be set aside.

Learned Standing counsel appearing for the respondents contends that every opportunity was given to the petitioner to join the duties. He further contends that the petitioner remained absent unauthorisedly for more than one year and inspite of repeated requests and reminders, he failed to join the duty. Therefore, the respondent bank having no other option declared that the petitioner has retired from service voluntarily in terms of the Circular dated 22.10.1994. Hence, there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions of the learned counsel appearing for the respective parties is of the considered view that when the petitioner was discharging his duties in the cadre of an Officer, the respondents ought to have followed the Service Regulations which are applicable to the Officer's cadre instead by applying Circular dated 22.10.1994, but they have passed impugned order dated 26.03.1997 declaring the petitioner as voluntarily retired from service. Therefore, the impugned order dated 26.03.1997 is liable to be set aside and it is accordingly set aside as it is passed without examining whether

the Circular dated 22.10.1994 is applicable to the Officer's cadre or not. Insofar as appellate authority's order dated 20.07.2005 is concerned, the same is also set aside, as it is passed without application of mind. Admittedly, petitioner had approached the appellate authority with a delay of 7½ years. Therefore, this Court is not inclined to grant any relief in respect of back wages to the petitioner and the respondents are directed to reinstate the petitioner into service without any monetary benefits. However, the service rendered by the petitioner with the respondent bank shall be counted for the purpose of pension and pensionary benefits.

Accordingly, this writ petition is disposed of. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 07-01-2020
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