**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 22013 of 2014
Reserved on : 03.03. 2020
Date of decision: 16.03.2020

Parveen Kumar Verma

......Petitioner

V/s.

Chairman State Bank of India and others

.......Respondents

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: - Mr. D.S. Nalwa, Advocate,
for the petitioner.

Mr. Amit Sharma, Advocate for
Mr. I.P.S. Doabia, Advocate,
for the respondents.

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Sanjay Kumar, J.

The petitioner assails the order dated 04.09.2013 (Annexure P-11) passed by the Regional Manager of the State Bank of India at its Regional Business Office, Sirsa. Thereby, the petitioner was stated to have voluntarily retired/resigned from service. He also challenges the later order dated 04.06.2014 (Annexure P-13) passed by the Branch Manager of the Bank at its Chautala Branch in District Sirsa, informing him that his absence could not be condoned and that he would not be allowed to join duty.

The petitioner entered the service of the Bank as a Messenger in the year 1997. It is his claim that his health deteriorated as he was diagnosed with tuberculosis in the cervical spine (Intranedullary Tuberculoma). While so, he was transferred on 09.07.2012 to the Chautala

Branch of the Bank. He claims to have submitted an application to the Branch Manager at Chautala seeking grant of leave on 10.07.2012. Admittedly, he remained absent from duty since the said date. It is also not in dispute that the Bank did not grant him any leave at that time.

The Bank issued Memo dated 05.02.2013 (Annexure P-7) to the petitioner through its Branch Manager observing that he had unauthorizedly absented himself from duty since 10.07.2012 and calling upon him to report to duty within three days and explain the reasons for his absence. The petitioner did not respond to this memo. He was then issued letter dated 11.05.2013 (Annexure P-8), which was dispatched to him by registered post with acknowledgement due on 11.05.2013, by the Branch Manager of the Chautala Branch of the Bank. Therein, while referring to the earlier memo dated 05.02.2013, the Branch Manager observed that the petitioner was still continuing to be absent from duty and advised him to report for duty within 30 days. He further cautioned him that if he failed to do so, he would be deemed to have voluntarily retired from service on the expiry of the notice period. The Branch Manager further stated that in such an event, the petitioner would be liable to pay the Bank 14 days/one month's pay and allowances in lieu of notice.

The petitioner replied to this notice on 08.06.2013 stating that he was not feeling well and asking for extension of leave for 15 days. Thereupon, the Branch Manager of the Chautala Branch of the Bank issued letter dated 10.06.2013 (Annexure P-10), sent to the petitioner by registered post with acknowledgement due on 12.06.2013. Therein, while referring to the petitioner's reply dated 08.06.2013, the Branch Manager stated that the petitioner was on leave without taking prior sanction and advised him to submit his leave application in the proper format along with the Medical Certificate from the Chief Medical Officer of his district.

The Branch Manager further stated that the petitioner's conduct was highly irregular and in contravention of the Rules and advised him to report to the Branch along with documents.

Thereafter, the Disciplinary Authority of the Bank issued the '3rd and final notice' dated 04.09.2013 to the petitioner. Therein, the Disciplinary Authority took note of the unauthorized absence of the petitioner from duty since 10.07.2012 and, while referring to the letter dated 11.05.2013 sent to him earlier, he noted that the petitioner had failed to report for duty by 11.06.2013 and was therefore deemed to have voluntarily retired from the service of the Bank on 12.06.2013. He called upon the petitioner to pay to the Bank, within 15 days of the date of the notice, one month's pay and allowances in lieu of notice failing which the Bank would file a suit for recovery of the same without prejudice to its right to set off the same against the terminal dues and other amounts payable to the petitioner.

The petitioner then addressed letter dated 17.05.2014 to the Branch Manager of the Bank at Chautala stating that he had come to join duty on 14.05.2014 but had not been allowed to do so. He sought permission to resume duty at the Branch. In response to this communication, the Branch Manager of the Bank at Chautala addressed letter dated 04.06.2014 to the petitioner, informing him that he had continuously absented himself from duty for a period of one year and ten months since

10.07.2012 and such unauthorized absence could not be condoned without sufficient/valid evidence/reasons in terms of Clause 12.2.5 of the relevant instructions. He referred to the first notice dated 05.02.2013; the second notice which was served upon the petitioner on 01.05.2013 and the third and final notice which was served upon him by the RBO, Sirsa. He then extracted a portion of the third and final notice and concluded that as his absence could not be condoned at this stage, he could not be allowed to join duty.

The Bank filed its written statement. Therein, it set out at length the rule relating to 'Voluntary Cessation of Employment' as per its HR Handbook Volume-II (para 2.7). The same is extracted hereunder:

> '*Voluntary Cessation of Employment*
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> *When an employee absents himself from work for a period of 90 or more consecutive days without prior sanction from the competent authority or beyond the period of leave sanctioned originally including any extension thereof or when there is satisfactory evidence that he has taken up employment in India or outside, the management at any time thereafter may give a notice to the employee at his last known address as recorded with the bank calling upon him to report for the work within 30 days of the date of the notice.*
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> *Unless the employee reports for the work within 30 days of the notice or gives an explanation for his absence within the period of 30 days satisfying the management inter-alia that he has not taken up another employment or evocation, the employee shall be given a further notice to report for work within 30 days of the notice failing which the employee will be deemed to have voluntarily vacated*

his employment on the expiry of the said notice and advised accordingly be registered post.

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

If the employee fails to report for work within this 30 days period, then he shall be given a final notice to report for work within 30 days of this notice failing which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post.

If an employee again absents himself for the second time within a period of 30 days without submitting any application and obtaining sanction thereof, after reporting for duty in response to the first notice given after 90 days of absence or within 30 days period granted to him for reporting to work on his submitting a satisfactory reply to the first notice, a further notice shall be given after 30 days of such absence giving him 30 days time to report.

If he fails to report for work or reports for work in response to the notice but absents himself a third time from work within a period of 30 days without prior sanction, his name shall be struck off from the rolls of the establishment after 30 days of such absence under intimation to him by registered post deeming that he has voluntarily vacated his appointment.

Any notice under the clause shall be in language understood by the employee concerned. The notice shall be sent to him by registered post with acknowledgement due.

Where the notice under this clause is sent to the employee by registered post acknowledgement due at the last recorded address communicated in writing by the employee and acknowledged by the bank, the same shall be deemed as good and proper service.

To stand the legal scrutiny, it is essential that the employee concerned is given opportunity at each stage to report back for duties/explain his absence to the satisfaction of the bank.'

In terms of the aforestated prescribed procedure, the petitioner necessarily had to be issued three consecutive notices of 30 days each, before enforcing voluntary cessation of employment. The first notice is to be issued upon absence for a period of 90 or more consecutive days, calling upon the employee to report for work within 30 days of the date of notice. If within such stipulated time, the employee reports for work or gives an explanation for his absence to the satisfaction of the Management, *inter-alia*, that he has not taken up another employment or avocation, the matter would end there. If, however, he fails to do so, he is to be given a second notice calling upon him to report for work within 30 days, mentioning that he would be deemed to have voluntarily vacated his employment on expiry of the notice period. Again, if the employee submits a satisfactory reply, he is to be permitted to join duty within 30 days from the date of expiry of the notice period under this second notice, without prejudice to the Bank's right to take action. However, if the employee fails to report for work within such 30 days period, he has to be given a final notice calling upon him to report for work within 30 days, failing which he is deemed to have voluntarily vacated his employment.

The facts in the case on hand, as set out *supra*, do not reflect proper compliance with the requirements of the aforestated Rule. The first notice dated 05.02.2013 cannot be taken to be a notice in terms of this Rule, as it gave a mere three days to the petitioner to report for duty. If any typographical mistake was made in this notice, it was for the Bank to take corrective measures but, admittedly, none were taken. Therefore, this notice fails to qualify as a notice relatable to the aforestated Rule. The first notice would therefore be the notice dated 11.05.2013, which called upon the petitioner to report for duty within 30 days. In response thereto, the petitioner submitted letter dated 08.06.2013 claiming that he was not well and seeking leave. There is no indication of the Bank applying its mind and recording a finding as to whether it found this to be a satisfactory explanation in terms of the Rule. In any event, the Bank then issued the '3rd and final notice' dated 04.09.2013. Though this is titled as a '3rd and final notice', it could not be taken to be a notice under the Rule at all, inasmuch as it did not offer the petitioner 30 days time to report for duty, as required by the Rule. On the other hand, this notice recorded that as the petitioner had failed to report for duty within 30 days from the earlier notice dated 11.05.2013, he was deemed to have voluntarily retired from the service of the Bank on 12.06.2013.

In effect, the Bank issued only one notice which can be taken to be relatable to the aforestated Rule relating to Voluntary Cessation of Employment. Without adhering to the prescribed procedure, it was not open to the Bank to adopt its own methodology and visit voluntary retirement upon the petitioner. The entire exercise therefore stands vitiated on this ground. Well settled is the legal proposition that where a rule provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner [See **TAYLOR V/s. TAYLOR**{(1875) LR 1 Ch D426 @ p. 431},**NAZIR AHMAD V/s. KING EMPEROR**{AIR 1936 PC 253}and **RAO SHIV BAHADUR SING V/s. STATE OF VINDHYA PRADESH**{AIR 1954 SC 322}]. Further, it may be noted that in terms of the law laid down by the Supreme Court in **UPTRON INDIA LTD. V/s. SHAMMI BHAN**[1998(6) SCC 538], the discretion vesting in an authority cannot be exercised capriciously.

On the above analysis, the action of the Bank in imposing voluntary retirement upon the petitioner, *vide* the order dated 04.09.2013, and its consequential refusal to allow him to join duty, *vide* the order dated 04.06.2014, cannot be sustained.

The writ petition is accordingly allowed. Both the impugned orders are set aside.

No order as to costs.

(SANJAY KUMAR)
JUDGE

16.03.2020
rakesh
whether speaking/non speaking : *Yes/no*
whether reportable/non reportable : Yes/no