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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.03.2021

PRONOUNCED ON : 12.03.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1471 of 2008

and

M.P.No.1 of 2010

1. The Karur Vysya Bank Limited,
Registered Office,
Erode Road,
Karur - 639 002.
Represented by its
Deputy General Manager (Personnel)
 2. The Assistant General Manager,
The Karur Vysya Bank Limited,
Data Centre, Tidel Park,
Chennai.
- ... Appellants/Defendants

Vs.

M.Manimaran,
S/o, R.Matheeran,
A-4, MVG Mudhra
250, Ram Nagar, II Street,
Vijaya Nagar,
Velachery-42.

... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the VI Additional Judge, City Civil Court, Chennai dated 13.12.2007 in A.S.No.492 of 2006, confirming the judgment and decree of the 1st Assistant Judge, City Civil Court, Chennai, dated 31.01.2006 in O.S.No.6336 of 2003.

For Appellants : Mr.Anand Gopalan
for M/s. T.S.Gopalan & Co.
For Respondent : Mr.G.P.Arivu Chudar

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 13.12.2007 passed in A.S.No.492 of 2006 on the file of the VI Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 31.01.2006 passed in O.S.No.6336 of 2003 on the file of the I Assistant Judge, City Civil Court, Chennai.



2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. The defendants 1 and 2 in O.S.No.6336 of 2003 are the appellants in this second appeal.

4. Suit for declaration, permanent injunction and damages.

5. The case of the plaintiff in brief is that the plaintiff joined in the defendants' company on 14.02.1994 as clerk and subsequently he passed the computer officer test conducted by the bank and promoted as officer scale-I with effect from 19.08.1996 and he was put on probation in the post of officer from 19.08.1996 and from 19.02.1997 he became a confirmed officer and on 01.04.2003, he was promoted as officer scale-II and as on date he has completed nine years nine months and twenty four days of continuous service. At the time of entering into service, there is no binding contract that the plaintiff should compulsorily serve in the defendants' bank for a minimum number of years of service. There was no contract or agreement to that effect. Hence, there is no impediment for the plaintiff to quit the present employment for his better prospects and for his career development at any time he likes and the plaintiff got an employment as product analyst in the Scope International Limited, Nungambakkam which would fetch him higher salary and also give him a wider scope for developing his career in the field of computer software. Therefore, the plaintiff submitted the resignation letter on 11.11.2003 and requested to relieve him from 22.11.2003. The Deputy General Manager, vide letter dated 17.11.2003 replied that the plaintiff has to work for three months and notice pay in lieu of three months could not be accepted. It was also stated that the plaintiff was one of the employees who was given the familiarization programme for 45 days and they would advise the plaintiff regarding the acceptance of the resignation shortly. However, if the plaintiff worked for three months in the defendants' bank, he would lose the opportunity of better employment and therefore not willing to take the risk and requested the bank to relieve him immediately from 29.11.2003. However, the defendants' company intimated the plaintiff to work compulsorily for three months. In such a situation, the plaintiff has to lose the better employment and on account of the defendants' bank not relieving him from duty as requested by way of the resignation, the plaintiff had been put on mental agony and frustration. The resignation and notice pay of the contract is governed by clause 7 of the appointment order dated 01.08.1996 which runs as follows:



Clause(7)

" If you wish to leave the services after confirmation you may resign from the employment of the bank by giving three months notice in writing where such resignation is accepted by the bank you may be relieved on the expiry of such notice period or at any time earlier either accepting payment in lieu of notice period part there of or waiving part or whole of it at the discretion of the bank provided where any disciplinary proceedings/legal proceedings have been initiated the letter of resignation shall have no effect unless, it is accepted by the competent authority.
If you....."

6. The plaintiff would further state that several persons of officer rank and below and above had been instantly relieved on payment of three months notice pay by invoking the abovesaid Clause No.7. However in the case of the plaintiff, the management has not properly used their discretion and they have not accepted the plaintiff's resignation immediately and it is a clear case of victimization and unfair labour practice and arbitrary act. In the reply letter dated 28.11.2003, the Manager claimed Rs.1.53 lakhs as the cost of the training programme incurred by the bank and the plaintiff was directed to remit the said amount immediately. However, the plaintiff is not liable to pay the abovesaid amount and he was selected to undergo the abovesaid programme by the defendants' bank for the purpose of taking more work from the plaintiff for bringing higher productivity and if the plaintiff had not accepted the training programme, he would have been sent out of his employment and accordingly the plaintiff had undergone the training programme. After the training programme, no additional remuneration was given to the plaintiff by the defendants' bank and by way of the services rendered by the plaintiff after training programme, the defendants' bank had earned several crores of money and therefore the demand of Rs.1.53 lakhs as the cost incurred by the bank for imparting the training for the plaintiff is totally untenable. Hence, according to the plaintiff, he has been necessitated to lay the suit against the defendant for appropriate reliefs.

7. The defendants resisted the plaintiff's suit contending that the plaintiff's suit is not maintainable either in law or on facts and according to the defendants, the Court at Chennai has no territorial jurisdiction to entertain the suit laid by the plaintiff and according to the defendants, they are not carrying on the business within the territorial jurisdiction of the Chennai Court. After adverting to the employment of the plaintiff's employment in the bank, it is putforth that the terms and conditions of the plaintiff's service with the bank is guided by the appointment letter dated 01.08.1996 and accepting the terms and conditions, the plaintiff joined in the bank. The



plaintiff could resign from services after giving three months notice and if the same is accepted by the bank. The bank could refuse the said acceptance for various reasons as given in the terms and conditions of service. The plaintiff was given the job training in various better scales for the purpose of computerisation of the defendants' branches and thereafter the plaintiff was promoted from scale I officer and subsequently to scale II officer and he has been selected as a member of Core Committee for implementation of Core Banking Solutions. He was further given extensive training programme on Iflex Product Walk through Familiarisation Programme for the period of 45 days and the defendants' bank incurred expenditure in imparting the abovesaid training to the plaintiff. The training was imparted to the plaintiff only to implement the package for the benefit of the bank. Despite the abovesaid factors, the plaintiff wanted to leave and he has to give three months salary in lieu of notice requesting him to relieve from 22.11.2003 by his letter dated 17.11.2003. The bank informed that he was required to give three months notice of his intention to resign and it was not obliged to accept the salary in lieu of the notice and also further apprised that for the training given to him in various computer operations and it was difficult to make immediate alternative arrangement to replace him and vide letter dated 17.11.2003, the plaintiff requested to be relieved on or before 10.12.2003. Further on 19.11.2003, he sent another letter requesting him to relieve him on 23.11.2003 itself and vide letter dated 28.11.2003, the defendants informed the plaintiff that they would be willing to accept his resignation letter and relieving him after expiry of the three months notice provided he reimbursed the cost of training programme amounting to Rs.1.53 lakhs. Meanwhile, the plaintiff applied for medical leave for 26 days without submitting any medical certificate and continue to remain absent on medical grounds and also failed to appear for the medical examination and reported for duty only on 06.12.2003 and vide letter dated 06.12.2003, the plaintiff requested the bank not to insist for the payment of the training cost of Rs.1.53 lakhs and relieving him by accepting the three months salary in lieu of notice and Rs.5,000/- by way of bond amount towards the cost of one of his training. On 12.12.2003, the plaintiff submitted a letter stating that he had relieved himself from the services of the defendants' bank and requesting for settlement of his terminal benefits and thereafter unauthorisedly remained absent. On 20.12.2003, the defendants sent a letter to the plaintiff informing that his resignation has not been accepted and directing him to report for duty on or before 27.12.2003. The plaintiff has broken the contract of his employment and his resignation is not in accordance with the contract of employment and it is wrongful. The plaintiff has not made out any case of loss of reputation or mental agony and not entitled to claim damages of Rs.50,000/- as putforth in the plaint. All the allegations contained in the



plaint are totally false and accordingly prayed for the dismissal of the plaintiff's suit.

8. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A19 were marked. On the side of the defendants, D.W.1 was examined. Exs. B1 to B10 were marked.

9. On an appreciation of the materials placed on record and the submissions put forth by the respective parties, the trial court was pleased to grant the reliefs of declaration, permanent injunction and damages at Rs.30,000/- in favour of the plaintiff and accordingly decreed the suit in favour of the plaintiff. On appeal by the defendants, the first appellate court has also on an appreciation of the materials available on record and the submissions put forth by the respective parties, confirming the judgment and decree of the trial court and thereby dismissed the appeal preferred by the defendants. Impugning the same, the present second appeal has been laid.

10. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

a) Do Exhibits A1 and B3 confer unfettered right on the respondent to tender three months notice pay in lieu of three months notice and leave employment - does not the Appellant have the discretion to refuse to accept three months salary in lieu of notice and require employee to serve the notice period? Can the respondent compel the Appellant to accept three months notice pay instead of three months notice by way of a declaration?

b) Is the respondent entitled to a declaration that his registration is lawful, when it is not in accordance with Exhibits A-1 and B3, and when the Appellant did not accept three months salary in lieu of notice?

c) Is the respondent entitled to the damages of Rs.30,000/- awarded for mental agony and loss of reputation when the evidence on record show that the respondent had left employment without serving the notice period and that he had taken up employment in Scope International offered under Exhibit A-9 and therefore had not suffered any loss on account of refusal to accept resignation?

d) Is not the declaratory "relief" claimed in the suit actually a prayer for different reliefs including one for payment of entire terminal benefits



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and a declaration that the Appellant is not entitled to claim Rs.1,53,000/- towards the training costs under Exhibit B-3 and is the suit properly valued?

e) Had not the prayer for a declaration that "the Plaintiff is entitled to get relieved from the post immediately" become infructuous upon the respondent relieving himself on 12.12.2003, without serving the notice period?

11. The plaintiff who had rendered service under the defendants' bank in various capacities and for his future prospects and better income, had chosen to resign from the defendants' bank and accordingly it is found that the he had submitted the resignation letter on 11.11.2003 to the defendants' bank marked as Ex.A4 requesting them to relieve him from the services of the defendants' bank before 22.11.2003. On a perusal of Ex.A4, it is found that the plaintiff has agreed to pay the three months salary in lieu of the three months notice to be given as per the terms of the contract of employment entered into between the plaintiff and the defendants' bank and therefore it is found that the abovesaid resignation letter of the plaintiff is in consonance with the terms of the contract of employment entered into between the plaintiff and the defendants' company. In this connection, the appointment letter issued by the defendants' bank to the plaintiff marked as Ex.A1 contains the terms and conditions of the employment and as regards the point on resignation, the relevant clause 7 contained in Ex.A1 is extracted below:

7. If you wish to leave the services after confirmation, you may resign from the employment of the Bank by giving three months notice in writing. Where such resignation is accepted by the Bank you may be relieved on the expiry of such notice period or at any time earlier either accepting payment in lieu of notice period part there of or waiving part or whole of it at the discretion of the Bank provided where any disciplinary proceedings/legal proceedings have been initiated the letter of resignation shall have no effect unless, it is accepted by the competent authority.

If you wish to leave the services of the Bank during Probationary Period, besides fulfilling the above requirements, you shall also have to pay three months last drawn gross emoluments as liquidated damages to the Bank.

Similarly, in the agreement entered into between the plaintiff and the defendants qua the employment marked as Ex.B3, on the point of resignation clause 4 is relevant which is extracted below:



4. That the employee, may resign from the employment of the Bank by giving three months notice in writing. Where such resignation is accepted by the Bank the employee may be relieved on the expiry of such notice period or at any time earlier either accepting payment in lieu of the notice period or part thereof or waiving part or whole of it at the discretion of the Bank: provided where any disciplinary proceedings/legal proceedings have been initiated, the letter of resignation shall have no effect unless it is accepted by the Competent Authority. Where the employee has given notice of resignation but Disciplinary action is contemplated against him and in cases where intimation to that effect is given to the employee concerned within the notice period of three months, the letter of resignation will have no effect.

That the employee, while he/she is on probation, desires to leave the services of the Bank, besides fulfilling the above requirements, he/she shall also pay three months last drawn gross emoluments as liquidated damages to the Bank.

12. It is found that the plaintiff is a confirmed officer of the defendants' bank. It is not dispute. On a reading of the abovesaid clause 7 contained in Ex.A1 and clause 4 contained in Ex.B3, it is evident that while submitting the resignation, the plaintiff should give three months notice in writing, however for waiving the said notice, the plaintiff may offer to pay three months salary in lieu of the notice of three months and accordingly it is found that the resignation letter submitted by the plaintiff conforms to the clause 7 as well as clause 4 of Ex.A1 and B3. It is further noted that the discretion is given to the bank in not accepting the resignation and that discretion is governed on the only point ie., when any disciplinary proceedings or legal proceedings had been initiated, the defendants' bank is not bound to accept the resignation and in such circumstances, the letter of resignation shall have no effect. That is the only embargo put on the employees of the defendants' bank as regards the acceptance of their resignation.

13. Though the defendants' bank at the first instance, had communicated to the plaintiff that his letter of resignation would be considered and directed him to continue the work under the bank, however, later, it is found that despite the plaintiff offering to pay three months salary in lieu of the three months notice, the defendants' bank sent a letter directing the plaintiff to pay Rs.1.53 lakhs said to be the expenses incurred by the defendants' bank for imparting the training to the plaintiff while in the service of the defendants' bank. However, the abovesaid condition imposed by the defendants' bank for accepting the resignation of the plaintiff, as such, cannot be accepted particularly when the



same is not in accordance with the clause 7 of Ex.A1 and clause 4 of Ex.B3.

14. When from the materials placed on record, when the training had been imparted to the plaintiff by the bank voluntarily by selecting him from the various employees of the bank and when it is further noted that after the training, the plaintiff had not been promoted on the footing that he had undergone the training and not paid any special pay in lieu of the special training and when it is found that the training had not been given to the plaintiff as per the requisition of the plaintiff and as above pointed out,, the terms and conditions of employment entered into between the plaintiff and the defendants' bank do not put any condition that the plaintiff is liable to reimburse the training charges to the defendants' bank, all put together, it is evident that as held by the Courts below, the defendants bank is not entitled to demand the training charges amounting to Rs.1.53 lakhs from the plaintiff as a condition for accepting his resignation. Therefore, the defendants' bank instead of accepting the plaintiff's resignation by receiving three months salary offered by the plaintiff in lieu of the three months notice and when admittedly no disciplinary/legal proceedings are pending against the plaintiff's on the date of the letter of resignation, the defendants' company cannot be allowed to contend that it has got the absolute right either to accept or reject the resignation submitted by the plaintiff and it may act as it thinks fit and choose and when no such power has been given to the defendants' bank as per Exs.A1 and B3 as referred to supra, the Courts below are found to be justified in rejecting the defence version that the plaintiff is not entitled to get himself relieved from the defendants' bank without serving for three months period before accepting his resignation. When the option is given to the plaintiff under the terms and conditions of the employment to waive the three months notice by paying the three months salary and when as above pointed out, no disciplinary or legal proceedings is pending against the plaintiff on the date of the letter of resignation, the defendants' Bank is liable to accept the three months salary and relieve the plaintiff from the service by way of accepting the resignation and cannot be allowed to compel the plaintiff to pay the training charges as putforth by it. It is thus found that the resignation letter offered by the plaintiff is in accordance with the terms and conditions set out in Exs.A1 and B3. Therefore, the Courts below are found to be correct in granting the relief of declaration and permanent injunction as prayed for by the plaintiff.

15. The plaintiff had offered to resign from the defendants' bank only for getting better employment in other company and when the plaintiff is required to join in the new company within the stipulated period of time as directed by the



said company and accordingly the plaintiff having been requesting the defendants to accept his resignation at the earliest point of time by accepting the three months salary offered in his resignation letter and the defendants in the various communications having not acted positively in accordance with the terms and conditions of the employment contained in Exs.A1 and B3 and on the other hand, as above pointed out, imposed the condition directing the plaintiff to pay the training charges, knowing fully well, that such condition cannot be imposed for accepting the resignation as per the terms and conditions of the employment entered into between the parties, finally, it is seen that the plaintiff had been forced to leave the services of the defendants' bank under the intimation by way of the letter dated 12.12.2003.

16. In the light of the various communications exchanged between the plaintiff and the defendants bank qua the resignation of the plaintiff and when the resignation offered by the plaintiff is found to be in accordance with the terms and conditions of the employment and when the defendants are found to have been dealing with the acceptance of the resignation without any justification and also found to be compelling the plaintiff to work in the defendants' bank contrary to the terms and conditions of employment particularly when the plaintiff is entitled to resign by offering three months salary and when the plaintiff is required to join in the new organization within a particular period of time, the defendants' bank having delayed the plaintiff to pursue the said course, as held by the Courts below, the plaintiff's would have been put to mental agony and frustration and taking into consideration of the abovesaid factors, the Courts below are found to be justified in granting the damages in favour of the plaintiff for a sum of Rs.30,000/-. Merely because the plaintiff had subsequently joined in the new organization that cannot be projected as a factor on the part of the defendants to contend that he had not suffered any loss or mental agony on account of the refusal of the defendants' bank to accept the resignation immediately. When the defendants' bank is disentitled to prevent the plaintiff from joining in the new organization by offering the resignation in accordance with the terms and conditions of the employment as above pointed out and on the other hand, the defendants had been found to be directing the plaintiff to pay the training charges without any basis, hence the Courts below are found to be fully justified in rejecting the defence version and granting the appropriate reliefs in favour of the plaintiff.

17. The reasonings and conclusions of the Courts below for upholding the plaintiff's case being founded on the proper appreciation of the materials available on record, both on factual matrix as well as on the point of law and when they are not shown to be in any manner perverse, illogical and



irrational, I do not find any valid reason to interfere with the same.

18. In my considered opinion, no substantial question of law is involved in this second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are, for the reasons aforesaid, accordingly answered in favour of the plaintiff and against the defendants.

19. In conclusion, the judgment and decree dated 13.12.2007 passed in A.S.No.492 of 2006 on the file of the VI Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 31.01.2006 passed in O.S.No.6336 of 2003 on the file of the I Assistant Judge, City Civil Court, Chennai are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-V)

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Sub Assistant Registrar

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To

1. The VI Additional Judge,
City Civil Court,
Chennai.
2. The 1st Assistant Judge,
City Civil Court,
Chennai.

+1CC to M/s.T.S.Gopalan, Advocate, SR.No. 15943
+1CC to M/s.Law square, Advocate, SR.No. 16539

S.A.No.1471 of 2008
and
M.P.No.1 of 2010

NMI(CO)
B.VC (15/09/2021)