IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.5934 of 2009
and
M.P. No.1 of 2009

M.Sultan Mohideen ....Petitioner

Vs.

1. Central Bank of India,
   Rep. by its Chairman &
   Managing Director,
   Head Office, Chander Mukhi,
   Nariman Point,
   Mumbai – 400 023.

2. The General Manager,
   Central Bank of India,
   Zonal Office, Montieth Road,
   Chennai – 600 008.

3. The Assistant General Manager,
   Central Bank of India,
   Regional Office,
   Rahejha Complex III Floor,
   69, Anna Salai,
   Chennai – 600 008. ....Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus to call for the records from the files of the 3rd respondent in respect of his impugned proceedings bearing RO:HRD:2008-09/357 dated 2nd June 2008 imposing on the Petitioner the punishment of Removal from the bank's services and quash the same and consequently direct the respondent's Bank to settle all the terminal benefits and all other claims and payments pending settlement and accruing to the Petitioner.

For Petitioner : Mr.K.M.Ramesh

For Respondents : Mr.Anand Gopalan, for
M/s.T.S.Gopan and Co.

O R D E R

The petitioner was employed with the Central Bank of India (CBI), Coonoor Branch as a Senior Manager. The terms and conditions of the petitioner's employment are governed by the Central Bank of India (Officers') Service Regulations, 1979 (Regulations). On 05.03.2007, he submitted a letter of resignation seeking to resign from the services of the Bank. Regulation 20 (2) provided for a notice period of 90 days, upon expiry of which, the employee stands relieved automatically.

2. There is no dispute on this position and Regulation 20 (2) states as follows:

> "20- Termination of Service
>
> (1)………….
>
> (2) An officer shall not leave or discontinue his service in the Bank without first giving a notice in writing of his intention to leave or discontinue his service or resign. The period of notice required shall be 3 months and shall be submitted to the Competent Authority as prescribed in these regulations.
>
> Provided further that the Competent Authority may reduce the period of 3 months or remit the requirement of notice."

3. Regulation 20 (2) provides for automatic resignation upon the employee seeking the same, with a notice period of three months. The Competent Authority has, under the proviso, been permitted to reduce the notice period or even remit the requirement of a notice. Thus it is a clear and unambiguous position that the employee concerned is entitled to exit the Bank after the notice period, except if the Bank specifically rejects the request for resignation. In this case, there has been no rejection of the petitioner's request and the period of notice would draw to an end on 03.06.2007.

4. On 18.04.2007, the petitioner received a copy of letter addressed by Regional Office, Coimbatore to the Coonoor Branch of the Bank that states as follows, 'The application for resignation from Bank's service submitted by the member on 05.03.2007 is under process with us. Please advise the member that he cannot be deemed to have relieved from Bank's service on the expiry of three months notice period unless and until a specific communication about acceptance of his resignation from Bank's service has been received by him.'

5. This letter does not appear to be in tandem with the applicable Regulation in so far as the Regulation does not provide for an acceptance of resignation but only for a rejection of the employee’s application for resignation. On 04.05.2007, the petitioner was transferred to the International Business Branch (IBB) at Chennai and notwithstanding his request for resignation, he assumed charge on 14.05.2007. Between 25.05.2007 and 29.05.2007, a snap audit was conducted at his erstwhile Branch at Coonoor.

6. In the course of arguments, both the learned counsel would admit to the position that the petitioner had been asked to go to Coonoor and assist the conduct of the audit since he has been Senior Manager there until recently. The petitioner likewise accommodated the request. On 19.06.2007, the petitioner had received a draft memo of charges alleging certain irregularities in the management of the Coonoor branch to which, the petitioner replied on 06.09.2007 requesting that the charges be dropped. He stated that the audit objections that had been raised had been duly and fully addressed and explanations furnished.

7. The petitioner has also received his salary for the period when he assumed charge of the IBB branch from May to September, 2007. Thereafter, he applied for ordinary leave from 05.10.2007 to 13.10.2007 on the ground of ill health that was sanctioned. He sought extension of leave from 16.10.2007 to 27.10.2007 and on 24.10.2007 the same was rejected by the Bank. On 05.11.2007, he had been directed to appear before the Medical Board for examination vide phonogram vide even date, that made reference to a telegram issued earlier informing him that his absence was to be treated as unauthorized and on the basis of loss of pay.

8. On 17.11.2007, a memo was issued to the petitioner in regard to his unauthorized absence and on 21.11.2007 the petitioner sought time to reply to the memo. On 14.01.2008, though the petitioner was directed to appear before the Government Hospital, Coimbatore for medical checkup, he neither appeared nor resumed duty and on 15.03.2008, a charge memo was issued for continued absence, unsanctioned.

9. Though, he was directed to appear for enquiry on 28.03.2008, 05.04.2008 and 17.04.2008, there was no appearance by the petitioner on the aforesaid dates. On 22.05.2008, an enquiry report was forwarded wherein the officer had found the absence of the petitioner from the period 16.10.2007 and thereafter unsanctioned and unauthorized. On 02.06.2008, the services of the petitioner were terminated and challenging the same the petitioner is before this Court.

10. In addition to the admitted facts set out aforesaid, the petitioner would also submit that the draft memo of charges issued to him on 19.06.2007 had not been pursued by the Bank and have been dropped. His challenge to the order of termination is premised on the position that his request for resignation came into effect on 30.06.2007 and in such circumstances, there could be no question of terminating her services.

11. The stand of the Bank is that by letter dated 18.04.2007 the petitioner had been duly informed that his resignation was not liable to be automatically accepted until a specific communication was issued in that regard. Thereafter, the petitioner has complied with the order of transfer and joined the IBB branch in Chennai on 14.05.2007, participated in the audit proceedings at Coonoor and received salary till September, 2007. He has, by conduct disregarded the resignation and can no longer pursue or refer to the same. According to the respondents, the request for resignation stood overridden by the petitioner the minute he acquiesced to the order transferring him to Chennai.

12. The respondent adopts the stand that the application for resignation has not been acted upon by both parties and in the course of oral argument, they concede to the position that no order of rejection was ever sent to him. A preliminary objection is raised on the maintainability of the writ petition and the Bank relies on two judgments of the Hon'ble Supreme Court in the cases of Modern School Vs Shashi Pal Sharma ((2007) 8 SCC 540) and K.K.Saksena Vs International Commission on Irrigation & Drainage ((2015) 4 SCC 670). The arguments are twofold, one that the employment of the petitioner is contractual and two, that the terms of the contract are governed by Service Regulations that are not statutory in nature.

13. The defence is also two-fold. Firstly, the petitioner would say that the writ petition has been pending since 2009 and it would thus not be appropriate to foreclose the substantial issues that arise on the technical ground of maintainability. More importantly, the respondent Bank is a Nationalised Bank and though the question that arises is qua as a specific employee, the employee renders a public duty as part of the mandate of the Bank. The Bank is expected to adhere to fair and transparent norms in dealing with the employees and any perversity in this regard would fall within the ambit of judicial review.

14. I deal with the aspect of maintainability first. In the case of K.K.Saksena (Supra), the Hon'ble Supreme Court reiterates the well settled position that the nature and extent of duty imposed upon an authority and the extent of its public nature and function are to be examined in order to determine whether it is amenable to Article 226 of the Constitution of

India. Thus even if, generally, a body performing public duty were amenable to writ jurisdiction, it cannot be said that all its decisions were subject to judicial review and only such decisions that have some element of public duty in them would be so amenable.

15. However, the Bench clarified that the term 'Authority' used in Article 226 is to be interpreted more liberally than the use of the same term in Article 12 since, in a writ petition the powers of the High Court to issue writs for enforcement of rights is wide and includes all rights apart from fundamental rights under Constitution.

16. Several earlier judgments of the Hon'ble Supreme Court were referred to in this context such as Andi Mukta Sadguru Shree Mukta Jeevandas Swami Suvarna Jayanti Mahotsav Smarak Trust Vs. V.R.Rudani and others ((1989) 2 SCC 691) was referred to where the Court has held that the firm or structure of the entity concerned may not be so relevant as the nature of duty imposed upon the Authority and the functionality of the Authority itself.

17. The Bank relies on this judgment to state that even if, as a nationalized Bank its activities in the sector of Banking would be amenable to judicial review as such activities would, no doubt, have large scale public ramifications and consequences, when it comes to the matter of employment qua its employees, such matters would be solely governed solely by the terms of contract and the Service Regulations in force, and hence would stand outside the purview of judicial review.

18. In the case of Federal Bank Limited Vs. Sagar Thomas, ((2003) 10 SCC 733) the Hon'ble Supreme Court culled out the following Authorities/persons amenable to writ jurisdiction in eight categories being (i) the State (Govt); (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

19. Upon a careful study of the precedents, the Bench held that even if an Authority were to be construed as 'State' within the meaning of Article 12 of the Constitution of India, a writ petition would not lie where what a writ petitioner sought was the enforcement of private law rights.

20. In the case of B.Anita Vs General Manager, HRD, The Karur Vysya Bank Limited and others (W.P. No.25101 of 2017

dated 16.04.2019), confirmed by dated 10.12.2020 by the Division Bench in Writ Appeal No.1500 of 2019, a similar question had arisen with regard to the maintainability of the writ petition filed by an employee challenging an order of dismissal. The writ petition had been dismissed as non-maintainable based upon the judgement of the Hon'ble Supreme Court in the case of Zee Tele Films Limited and others Vs Union of India and others ((2005) 4 SCC 649) that set out a series of guidelines in this regard:

> '22. Above is the ratio decidendi laid down by a seven Judge Bench of this Court which is binding on this Bench. The facts of the case in hand will have to be tested on the touch stone of the parameters laid down in Pradeep Kumar Biswas's case (supra). Before doing so it would be worthwhile once again to recapitulate what are the guidelines laid down in Pradeep Kumar Biswas's case (supra) for a body to be a State under Article 12. They are:-
>
> (1) Principles laid down in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must ex hypothesi, be considered to be a State within the meaning of Article 12.
>
> (2) The Question in each case will have to be considered on the bases of facts available as to whether in the light of the cumulative facts as established, the body is financially, functionally, administratively dominated, by or under the control of the Government.
>
> (3) Such control must be particular to the body in question and must be pervasive. 13 (4) Mere regulatory control whether under statute or otherwise would not serve to make a body a State.'

21. Going one step further, the Hon'ble Bench in the case of Zee Telefilms (supra) noticed that the Board of Control for Cricket in India (BCCI) discharged public duties that were in the nature of State functions and thus remedy under Article 226 of the Constitution of India is always available to an aggrieved person. Thus, even if the Authority concerned was private, if it exercises public functions, the doors of this Court in writ jurisdiction would be open in such circumstances.

22. The question to be answered in this case is thus, whether the scope of the phrase 'public functions' would include the termination of services of the petitioner before me. This issue, no doubt, can be answered only upon an interpretation of the contract of service qua the petitioner and the Bank. However bearing in mind the specific issue that arises in this case, it

would be an over simplification if I were to merely close this issue as falling within the domain of private functionality of the bank.

23. A far larger question arises in this case and this is the interpretation of Regulation 20 (2) of the Service Rules, as applicable to, and qua all the bank employees. The petitioner would argue that upon completion of notice period of ninety days, he is entitled to exit the Bank and such exit must be accepted without demur, except if the request for resignation had been rejected. While, in principle accepting the aforesaid interpretation, the Bank carves out a caveat in this particular case, arguing that such entitlement had been overridden by the conduct of the petitioner.

24. The restricted interpretation placed upon Regulation 20 by the Bank would touch upon the service of all employees in the respondent organization. In stating so, I am conscious that (i) there was no disciplinary action at the juncture when the petitioner sought resignation, (ii) the operation of the Regulation is automatic and (iii) the application of the petitioner has not been rejected by the bank within the notice period of 90 days, or at all. As at this juncture, it ceases to be one of private contract and is amenable to judicial review. I thus hold this writ petition to be maintainable.

25. Coming to the merits of the matter, Regulation 20 (2) provides for an omnibus entitlement to resign from the services of the Bank upon condition that a notice period of three months shall be given by the employee. The proviso only serves to enable the competent Authority to reduce the notice period or to remit the requirement of notice altogether. It does not state anywhere that the employee may be kept 'on wait' or 'on hold' till such time the Bank takes a decision on his notice for resignation.

26. Thus, in my view, the appropriate interpretation of Regulation 20 (2) is that a notice for resignation, once tendered, would operate automatically and the employees is under no obligation to continue in the services of the Bank from the 91st day from date of service of the notice upon the competent Authority. The only exception would be a situation where the request for resignation is rejected. In this case, admittedly, there has been no rejection of the request for resignation till date.

27. Letter dated 18.04.2007 which states that the petitioner is deemed not to have been relieved until there was a specific communication about the acceptance of the resignation, is in my view, contrary to the express language and intent of Regulation 20. Nowhere does Regulation 20 envisage such

procedure or process wherein the employee is to be kept on tenterhooks about whether his letter of resignation had been accepted or not. The Regulation proceeds on accepted norms of service that once a request for resignation had been tendered, it is accepted unless rejected within the stipulated notice period.

28. I am supported in the above view by Regulation 3 that makes an exception in the case of an Officer in whose case disciplinary proceedings are pending. In such a case any request for resignation shall be subject to express approval by the competent authority. Thus, a clear distinction has been made by the Bank between those cases of employees with unblemished service and those with charges pending against them. It is acceptable that in a latter situation, an employee should not be permitted to escape the impact of disciplinary proceedings simply by tendering his resignation and in such a circumstance, the operation of the request for resignation is not automatic but shall take effect only if expressly accepted by the Authority.

29. In this case, there were no disciplinary proceedings pending as on 05.03.2007 when the petitioner submitted his letter of resignation and the draft of memo of charges has been issued to the petitioner only on 19.06.2007. Even those have, admittedly, been dropped.

30.The mere fact that the petitioner has acquiesced to the transfer order should in my view not be held against him. It is quite possible that the petitioner, having put in close to two decades of service with the Bank, perhaps, complied with the transfer order without appreciating the impact that his conduct would have. His conduct was merely that of a cooperative employee and this must not work to his detriment.

31. The petitioner was in service till 04.10.2007 and in my view, is entitled to salary for that period. This would have no bearing whatsoever on the validity of the resignation sought for by him or the application of Regulation 20 (2) in his case.

32. His absence from 05.10.2007 till date of termination cannot be held to be unauthorised and has to be seen in the context of his request for resignation, the express language of Regulation 20 and the subsequent cooperation by him in assisting the audit at Coonoor and serving at the International Business Branch at Chennai till 04.10.2007.

33. Order of termination dated 02.06.2008 is set aside and consequential benefits shall be computed and paid over to the petitioner within a period of four (4) weeks from today. This Writ Petition is allowed. Connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kbs/rkp

To

1. The Chairman & Managing Director,
   Central Bank of India,
   Head Office, Chander Mukhi,
   Nariman Point, Mumbai - 400 023.

2. The General Manager,
   Central Bank of India,
   Zonal Office, Montieth Road,
   Chennai - 600 008.

3. The Assistant General Manager,
   Central Bank of India,
   Regional Office,
   Rahejha Complex III Floor,
   69, Anna Salai, Chennai - 600 008.

+1cc to M/s.T.S.Gopalan&Co, Advocate, S.R.No.55739

+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.55811

W.P. No.5934 of 2009
and
M.P. No.1 of 2009

BR(CO)
RGA(17/11/2021)