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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 12.07.2022**Pronounced on: 04.08.2022**

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W.P.(C) 7897/2009**SARDAR PARAMJIT SINGH GIRGLA Petitioner**Through **Ms. Anjana Gosain, Ms. Ritika
Khanagwal and Ms. Shalini Nair,
Advocates.**

versus

PUNJAB & SIND BANK ...RespondentThrough: **Mr. Rajat Arora and Mr. Niraj
Kumar, Advocates.****CORAM:****HON'BLE MR. JUSTICE GAURANG KANTH****J U D G M E N T****GAURANG KANTH, J.**

1. The present petition has been filed under Article 226 of the Constitution of India for setting aside the award dated 23.07.2008 passed by Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-II, whereby the learned Presiding Officer has upheld the decision of the Deputy General Manager, Punjab and Sind Bank, Zonal Office for not allowing Mr. Pramajit Singh Girgla, Ex. Clerk-cum-Cashier, Punjab and Sind Bank, Hemkunt Colony Branch to join his duties on 07.08.1996 in response to the bank's first notice dated 06.07.1996. The learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-II further held that in terms of Clause 17 of the Bipartite Settlement (BPS) dated 10.04.1989, the action



of the Respondent Bank was proper and justified in voluntarily retiring the Petitioner from the services of the Bank with effect from 26.11.1996.

2. Before taking note of the submissions made by the respective counsels for the parties, the facts arising out of the records leading to the present petition need to be mentioned and analyzed. In the present case, the Petitioner was appointed as apprentice at Punjab & Sind Bank, Janak Puri Branch, New Delhi vide letter No. Staff CA/1917 dated 23.05.1978 issued by Manager Personnel, Punjab and Sind Bank Ltd. (Regd Office, Hall Bazar, Amritsar). Later, the Petitioner was transferred to Hemkunt Colony, New Delhi. In view of the Petitioner's unauthorized absence from duty, a notice dated 06.07.1996 was issued to him by the Bank directing him to report on duty within 30 days of the receipt of the said notice or provide an explanation of his absence otherwise he will be deemed to have been voluntarily retired from the services of the Respondent Bank on the expiry of the period of the said notice. The said notice was issued to the Petitioner on 06.07.1996 but was posted on 09.07.1996. Therefore, it is apparent that the said notice would have been received by the Petitioner on or after 09.07.1996. On 07.08.1996, i.e. within the period of 30 days, the Petitioner approached the Respondent Bank with an application seeking to join back his duties but he was not permitted to do so.

3. Thereafter, the Petitioner, vide letter dated 09.08.1996, again sought permission to join his duties and submitted that he could not report on duty earlier due to viral fever and back pain and was under treatment till 05.08.1996. The Respondent Bank, vide letter dated 14.08.1996, replied to the Petitioner to submit proof of his illness from



17.06.1994 to 05.08.1996 for considering his request for allowing him to join his duties. The Petitioner sent a legal notice dated 27.08.1996 for withdrawing the notice dated 06.07.1996 issued by the Respondent Bank and to reinstate the Petitioner back in service from the day of his termination with full service benefits. On 12.09.1996, the Petitioner filed a Suit No.544/1996 before the Civil Court and the same was dismissed by learned trial court vide its judgment dated 28.01.1998 on the ground of not being maintainable and premature. Another notice was issued to the Petitioner by the Respondent Bank on 07.10.1996 directing him to explain his unauthorized absence within 30 days of receipt of the notice, otherwise, he will be deemed to have been voluntarily retired from the services of the Bank on the expiry of the period of the said notice. In the absence of any response from the Petitioner to the Notice dated 07.10.1996 issued by the Respondent Bank, the Petitioner stood voluntarily retired with effect from 26.11.1996. The Petitioner has raised an Industrial Dispute thereby challenging his voluntarily retirement order.

4. The learned Industrial Tribunal at the first instance passed an award dated 01.05.2008 observing that the action of the Deputy General Manager, Punjab and Sind Bank, Zonal Office, C-14/16, Connaught Place, New Delhi for not allowing Mr. Pramajit Singh Girgla, Ex. Clerk-cum-Cashier, Punjab and Sind Bank, Hemkunt Colony Branch to join his duty when he reported on duty on 07.08.1996, treating him as voluntarily retired from the services w.e.f. 26.11.1996 under Clause 17 of the BPS and detaining his salary dues, was neither proper nor justified. The learned Industrial Tribunal had accordingly directed that the management should reinstate the Petitioner with continuity in service but without back



wages within two months from the date of the publication of the said award.

5. Subsequently, the respondent management filed an application before the learned Tribunal for setting aside the award dated 01.05.2008 claiming that they have not been given an opportunity to adduce additional evidence. The learned Tribunal set aside the said original award dated 01.05.2008 and permitted the respondent management to adduce additional evidence.

6. Thereafter, additional evidence was adduced by the management and after conclusion of the trial, the learned Industrial Tribunal passed the impugned award dated 23.07.2008, which is under challenge by way of the present writ petition.

7. The main thrust of the impugned award passed by the Industrial Tribunal is Clause 17 of the BPS. At the outset, it is necessary to review Clause 17 of the BPS which reads as under:-

*“When an employee absent 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 grounds for coming to the conclusion that the employee has no intention of not joining duties and furnishing necessary evidence, wherever 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 vocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the Bank's services 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 expiry of the aforesaid notice without prejudice to the Bank's right to take any action under the law or rules of service.

- a. When an employee goes abroad.
- b. 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."

8. A plain reading of Clause 17 of the BPS suggests that it has different stages, for taking action against an employee for unauthorized absence. Different stages of Clause 17 are:

"Stage-I - When an employee absent himself from work for a period of 90 or more consecutive days, Management shall 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. (FIRST NOTICE)

Stage-II – (a) If an employee does not join within the stipulated 30 days on receipt of the notice he shall be deemed to have voluntarily retired.

(b) If the employee report for duty within 30 days of the notice he shall be permitted to report to duty prejudice to the Bank's right to take any action under the law or rules of service.



Stage-III- *If an employee after joining his duties again remained absent for 30 days after reporting for duty in terms of FIRST NOTICE, a SECOND NOTICE to be given to the employee within 30 days of his absence, with 30 days reporting time.*

Stage-IV- *If the employee report for duty within 30 days but again absents himself within a period 30 days. His name to be struck off.”*

9. The learned Industrial Tribunal while discussing Clause 17 of the BPS has observed as under:-

“As per the provisions of Clause 17 BPS in case after 90 days absence a 30 days notice is sent the workman should report to join duty or give satisfactory explanation. In the instant case the workman approached within 30 days to resume his duties but he was not permitted to join. He made representation on 09.08.1996 to GM regarding this fact. The management did not permit him to join as he has not gone there to join with application and medical certificate. It is not required as per the provisions of the 17 BPS that the workman should report to duty along with explanation. He was directed to report for duty or give satisfactory explanation in the letter dated 06.07.1996. He did approach the bank for joining on 07.08.1996 but malafidely the workman was refused to resume his work. The workman has not been retired voluntarily on this notice.

From perusal of the above discussion it becomes quite obvious that the workman went to join duty on 09.08.1996. He was refused duty so notice dated 06.07.1996 is not effective.

This Tribunal held in the previous award that 90 days period for second notice is also necessary. From perusal of 17 (C) BPS it becomes quite obvious that after service of the first notice for absence of 90 days, the second notice may be sent after 30 days of absence.

The management sent another notice on 07.10.1996 after a gap of 60 days. The workman received this notice but he has stated in his cross-examination that he did not go to join duty and he did not send reply to this notice. After 30 days of service of notice the management rightly treated the workman voluntarily



retired. For second notice the mandatory period is 30 days and not 90 days as has been held by this court in the previous award.”

Submission on behalf of the Petitioner

10. Ms. Anjana Gosain, learned counsel for the Petitioner submitted that the learned Industrial Tribunal erred in passing the impugned award dated 23.07.2008 by not observing that there was no evidence on record to prove that the Petitioner remained unauthorizedly absent.

11. Counsel for the Petitioner further submitted that the first notice dated 06.07.1996 is unlawful and illegal since the Petitioner had neither been issued any show cause notice nor any enquiry was conducted against him. Learned counsel further contended that no opportunity was provided to the Petitioner to present his case, as such his removal from service is violative of Article 311 of the Constitution of India and against the principles of natural justice.

12. Learned counsel for the Petitioner further contended that the notice dated 06.07.1996 was dispatched on 09.07.1996 and received by the Petitioner on the very same date. Pursuant to notice dated 06.07.1996, the Petitioner reported for duty on 07.08.1996 but was not allowed to join. Thereafter, the Petitioner reported for duty before the Zonal Office on 09.08.1996 and submitted a letter whereby he has given reasons for his absence. Learned counsel emphatically urged that the Petitioner has complied with all the directions contained in the notice dated 06.07.1996 by reporting for duty within 30 days of the notice and also by giving reasons for his absence and his willingness to join. Further, it is contended that the Petitioner has fulfilled the norms, rules and conditions



of the notice dated 06.07.1996, which the Respondent Bank claims to have sent in terms of Clause 17 of the BPS. It is further contended that the said order of voluntary retirement is misconceived, and the Respondent/ Management has arbitrarily, unconstitutionally and in a malafide manner has debarred the Petitioner from getting his legal right of livelihood. Learned counsel further contended that there was no occasion for the Respondent/Management to issue the second notice and subsequently terminate the services of the Petitioner.

13. Learned counsel for the Petitioner further contended that the learned Industrial Tribunal erred in holding that the Petitioner failed to report for duty or submit any application pursuant to the second notice dated 07.10.1996, as the said notice never gave any directions in terms of BPS to the Petitioner to report for duty and instead, the said notice was issued to the Petitioner directing him to explain his unauthorized absence.

14. Learned counsel further contended that the Respondent neither produced the attendance Register nor any other document establishing that the Petitioner was unauthorizedly absent.

15. Learned counsel for the Petitioner further contended that the Respondent/ Management issued another notice dated 14.08.1996 but the same was never served on the Petitioner as admitted by the witness Sh.S.K. Behl on 12.07.2007.

16. Learned counsel for the Petitioner concluded her argument by highlighting the fact that the learned Industrial Tribunal had passed an ex-parte Award dated 01.05.2008 in favour of the Petitioner, however, the learned Industrial Tribunal made a blatant error while recalling the Award dated 01.05.2008 and granting permission to the management for



adducing additional evidence without taking into account that the issuance of second notice was illegal. Learned counsel for the Petitioner further pointed out that till date salary dues of the Petitioner have not been cleared by the Respondent/ Management.

Submission on behalf of the Respondent

17. Per contra, learned counsel for the Respondent contended that the Petitioner is bound by the service conditions as applicable to all the employees of the nationalized banks. The provisions of the BPS are valid and binding on the employees as well as the management. It is pointed out that the service conditions are settled at the national level and all the nationalized banks and their unions are a party to it.

18. Learned counsel further contended that the present case is of voluntary cessation of service by the Petitioner and as such there is no requirement of conducting an enquiry. Learned counsel for the Respondent very strenuously urged that it is necessary for this Court to bear in mind the conduct of the Petitioner before evaluating the terms of the BPS.

19. It was argued on behalf of the Respondent that the Petitioner was a habitual absentee. It was further pointed out that before issuance of the first notice dated 06.07.1996, the Petitioner vide communication dated 24.07.1995 was called upon to explain his conduct of continuously absenting from the Office. Thereafter, another notice dated 24.04.1996 was issued by Deputy General Manager, Zonal Office, Punjab and Sind Bank upon the Petitioner with a direction to report for duty within 30 days of the receipt of the said notice. In view of the fact that the Petitioner did not report for duty, the first notice dated 06.07.1996 in



terms of Clause 17 of the BPS was issued to the Petitioner. It is further submitted that after issuance of the first notice, two more notices dated 14.08.1996 and 17.09.1996 were also issued to the Petitioner.

20. Learned counsel for the Respondent further contended that though it was admitted in the evidence that the Petitioner reported for duty pursuant to the first notice and was not allowed to join but it was never the intention of the Petitioner to join his services as he was irregular in performing his duties diligently w.e.f. 17.06.1994. Thus, reporting for duty on 07.08.1996 is nothing but to circumvent the provision contained in Clause 17 of the BPS. He further submitted that even though it is assumed that the Petitioner reported for duty on 07.08.1996 but it would not condone the past absence on the part of the Petitioner.

21. Learned counsel for the Respondent further contended that the Respondent/ Management has taken action against the Petitioner strictly in accordance with Clause 17 of the BPS and the learned Industrial Tribunal has correctly passed the impugned award sustaining the action of the Management treating the Petitioner to have voluntarily retired from services w.e.f. 26.11.1996.

Legal Analysis based on facts of the present case

22. I have heard learned counsel for the parties and have gone through the entire record. Both the parties, during the trial, have produced witnesses in support of their case. In order to ascertain the fact whether the Petitioner has been absenting himself unauthorizedly, it is relevant to look through the evidence produced by the parties. Mr. H. S. Bakshi, Manager, Punjab and Sind Bank, Nehru Place had tendered his evidence



by way of an affidavit, relevant portion of which is recapitulated as under:-

“1. The workman was irregular of his attendance with effect from 1 June, 1994. He attended for only 56 days since June, 1994 till 26.11.1996. A notice dated 6.7.1996 under Clause 17 of the Bi-partite Settlement was served upon him calling upon him to join duties within 30 days of notice. He failed to do so. He reported on 7.8.1996 after the expiry of the notice. He failed to do so. He reported on 7.8.1996 after the expiry of the notice period stating that he was down with viral fever and back pain and under treatment till 5.8.1996. As per provisions of Bi-partite Settlement governing his service conditions, he was eligible for sick leave subject to production of medical certificate acceptable to the bank (para IX (4) of the Bi-partite Settlement dated 17.4.1984). He did not give any medical proof, as envisaged. Still, vide letter dated 14.8.1996, he was called upon to give the sufficient proof of his being under medical treatment so as to consider his request even after the expiry of notice, to which he did not respond. In view of his recalcitrant attitude towards correspondence of the management, after waiting for a further period of two months, vide notice dated 7.10.1996 under Clause 17(c), he was again given 30 days time to report for duty or satisfy the management that he has no intention of not joining duties. He neither reported for duties within 30 days of notice, nor submitted any reason / medical certificate nor showed any intent of joining duties but continued to be absent without any reason / information / notice. On his failure to report for duties or submitting any reason-within 30 as he was deemed to have been voluntarily retired w.e.f. 26.11.1996.”

(emphasis supplied)

23. During cross examination, Mr. H. S. Bakshi, Manager, Punjab and Sind Bank, Nehru Place deposed as under:-

“I work in PSB Zonal Office, Nehru Place, New Delhi. For last 38 years I have been working in the PSB, Nehru Place, New Delhi. Workman has never worked under me or along with me.



*I have been authorized by the management to give my statement in this case but I have not filed my authorization letter. **I have not brought the attendance register. I have not brought the attendance register today but I can produce the attendance register.** Objected by the management Advocate.*

*I do not remember as to when the workman was recruited in the employment of the bank. **The notice dated 06.07.1996 under Clause 17 of BPS was sent on 9.7.1996 and the Workman reported on 7.8.1996.** It is wrong to suggest that the workman gave a medical certificate. It is correct that Sh. Bahal was examined regarding the facts of the present case. It is correct that the workman has raised the case in Civil Court in the month of September, 1996. I do not remember second notice was issued during the pendency of the Civil Case. Second notice was issued on 7.10.1996. **No departmental enquiry was conducted against the workman.** I did not detain his 100% salary with the period from 1994 to 1996. His salary was put in sundary account. I do not remember how much salary he was drawing lastly. I do not remember how salary was credited to his loan account. I do not remember the date when the workman took the scooter plan. I do not remember who paid the scooter loan. He was not given any written instruction to collect the salary. I do not remember that the workman gave a medical certificate. **I do not remember how much medical leave was balance in the account of the workman. I have not brought the medical leave register as I was summoned to do so**”*

(emphasis supplied)

24. Mr. S. K. Behl, Senior Manager, Punjab and Sind Bank entered the witness box as MW-1 and during his cross examination, he deposed as under :-

*“It is correct that Ex. MW/1 (Ex. D-1) is not attendance register. It is wrong to suggest that Ex. MW/1 is not prepared on the basis of the attendance register. **It is correct that attendance register is not filed. The attendance register is 7 year old. I cannot say if it is available in the office or not.** The letter dated 6th July and 7th July might have been posted latest*



by 9th July. The 6th July half day being second Saturday and 7th July were holiday being Saturday and Sunday. **The letter dated 6th of July Ex. MWI/7 is in accordance with clause 17 of Bipartite Settlement. It is correct that the workman presented himself on 7.8.96 to report.** It is incorrect that the workman reported during the notice period. The notice period expired after 30 days from July 6, the date of issue of the letter. It is incorrect to suggest that I am deposing falsely. It is correct that the management has served notice dated 7.10.96. I cannot say when the notice was received by the respondent. However, it might have been sent on 3rd day of the date of the letter. The workman told that he could not join within the notice period as he was ill when he presented on 7.8.96 to report but he did not produce any medical certificate. Therefore he was again reminded to submit medical certificate. **It is incorrect to suggest that the workman reported according to the letter dated 6th July, 97 Vol. that he reported after the expiry of the time mentioned in the letter.** It is incorrect to suggest that the workman was given notice dated 7.10.96 again to correct the mistake on the part of the management. It is correct that the workman has filed a civil suit. Vol. that the said suit was dismissed. It is incorrect to suggest that the management has violated the provisions of Bipartite Settlement by not allowing the workman to report on 7.8.96. The letter Ex. MWI/8 has been written by the workman. It is incorrect to suggest that the workman has explained his absence in letter dated 9.8.96 stating that he was down with fever. Management has written letter dated 14.8.96 to the workman to produce proof of his absence. It is incorrect to suggest that the letter dated 14.8.96 was received by the workman. Vol. the said letter was despatched to the workman. **It is correct that the letter dated 14.8.96 was delivered back as unclaimed.** It is correct that the letter Ex. MWI/10 was sent after receipt of notice dated 27.8.96. It is incorrect to suggest that letter dated 6.7.96 was not complied with by the management. No enquiry was required to be conducted to invoke clause 17 of Bipartite Settlement. It is incorrect to suggest that the management has adopted unfair labour practice. I am deposing on the basis of the record. I do not have any personal knowledge. It is incorrect to suggest that



the salary has been incorrectly deducted by the management, (objected to). I do not remember exactly the amount of salary paid to the workman. It is incorrect to suggest that the workman never remained absent. It is correct to suggest that the workman is deemed to have retired from service. It is incorrect to suggest that I have made false averments in my affidavit”

(emphasis supplied)

25. From the conjoint reading of the aforementioned testimonies, it can be deciphered that the first notice dated 06.07.1996 was dispatched and received on 09.07.1996 pursuant to which the Petitioner reported for duty on 07.08.1996 and submitted an application stating the reason for his absence. Both Mr. H. S. Bakshi, Manager, Punjab and Sind Bank, Nehru Place and Mr. S. K. Behl, Senior Manager, Punjab and Sind Bank, admitted that the Petitioner reported for duty on 07.08.1996, however, it was stated that he was not allowed to join his duties as the Petitioner reported for duties after expiry of stipulated period of 30 days. It has also emerged from the testimonies of abovementioned witnesses that since no medical proof was attached with the application dated 07.08.1996, he was once again called upon vide letter dated 14.08.1996 to give sufficient proof of him being under medical treatment. However, admittedly, the letter dated 14.08.1996 was never served on the Petitioner and was received back unclaimed.

26. The evidence further reflects that no attendance register was produced by the Management/ Respondent. The details showing the period of days attended by the Petitioner from 17.06.1994 to 26.11.1996 have been produced by the Respondent/ Management vide Ex-MW1/1. It is also an admitted position that no departmental enquiry was held against the Petitioner for his unauthorized absence from duty and the action of



deemed voluntarily retirement w.e.f. 26.11.1996 has been taken strictly in accordance with Clause 17 of BPS.

27. At this stage, it is relevant to reproduce attendance sheet produced by the Respondent/Management which reads as under:-

<u>“Month</u>	<u>Dates</u>	<u>No. of days</u>
June '94	17/6, 18/6, 19/6, 22/6, 24/6	5 days
July '94	16/7, 17/7, 18/7, 19/7, 20/7, 21/7, 22/7	12 days
Aug. '94	23/7, 24/7, 25/7, 30/7, 31/7 1/8, 2/8, 3/8, 5/8, 7/8, 8/8, 14/8, 15/8, 16/8, 17/8, 18/8, 24/8, 25/8, 28/8, 29/8, 30/8, 31/8	17 days
Sept. '94	17/9, 19/9, 20/9, 21/9	4 days
Oct. '94	3/x, 5/x, 6/x, 19/x, 13/x, 15/x, 17/x, 30/x, 31/x	9 days
Nov. '94	4/11, 6/11	2 days
Dec. '94	9/12, 26/12, 27/12, 28/12	4 days
Jan/'95	1/1, 9/1	2 days
Feb. '95	17/2	1 day
		56 day (Fifty six days) ”

28. In terms of the abovementioned attendance chart, the Respondent/Management has claimed before the learned Industrial Tribunal that the



Petitioner has attended the office for only 56 days during the period from 17.06.1994 to 26.11.1996. However, on a plain reading of the attendance chart which is, *Ex. MWI/1*, it transpires that the days which are national/public holiday(s) are also included in the attendance chart, creating doubt on the authenticity and veracity of the said exhibited document. Moreover, the Respondent/Management failed to produce the attendance register or the medical leave register before the Ld. Industrial Tribunal.

29. Admittedly, the first notice dated 06.07.1996 was dispatched on 09.07.1996 and the Petitioner reported for duty on 07.08.1996. As per the BPS, the Petitioner was bound to report for duty within 30 days of the receipt of the notice. As such the period of the first notice is deemed to be reckoned from the date of receipt i.e., 09.07.1996. Taking into account 09.07.1996 as the date of receipt of the first notice, 30 days period to report for duty would come to an end on 08.08.1996 i.e., one day after the Petitioner reported for duty i.e., on 07.08.1996. As such it can be safely inferred that the Petitioner, pursuant to the first notice dated 06.07.1996 which was dispatched and received on 09.07.1996, reported for duty on 07.08.1996, i.e., within the stipulated period of 30 days and has adhered to the condition of reporting for duty within the specified period.

30. The High Court of Madras in the case of *A. Muthu v. Indian Overseas Bank & Ors.* reported in 1994 SCC Online Mad 72 while dealing with the issue with regard to Clause 17 of the Bipartite Settlement determining the date of reckoning period of the first notice, has held that:-

“11. The above extract of Clause 17-A clearly shows that a notice has to be served on the Petitioner at his last known address calling upon him to report for duty within 30 days of



*the date of notice and if 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 bank's service on the expiry of the said notice. **In my view, the date of notice has to be read as the date of receipt of the notice, otherwise, Clause XVII-A will be liable to be struck down as violative of Article 14 of the Constitution. Applying the principles in the rulings to validate the clause in the agreement and if the clause is read as within 30 days from the date of the receipt of notice, the Petitioner cannot have any objection.....***

*14. In my view, this is a case, where the term, 'date of the notice' as extracted above, **can be read as from the date of receipt of notice to save the clause from being struck down as it is violation of Article 14 of the Constitution of India. As I take the view that the Petitioner has reported for work within 30 days from the date of receipt of the notice** it is open to the Respondent-bank to consider his explanation and arrive at a conclusion whether the same is satisfactory or not."*

31. As discussed above, it is emphatically clear that Clause 17 of the BPS is a continuous action by the Management, having different stages, for taking an action against an employee for unauthorized absence. When an employee abstains from his work for a period of more than 90 days, first notice is to be issued to such employee with a direction to report for duty within 30 days of the receipt of the notice (Stage-I). Pursuant thereto if an employee does not join his duties within the stipulated period of time he shall be deemed to have voluntarily retired unless he reports on duty without prejudice to the right of the Management to take action against the said employee in terms of law or rules of service (Stage-II).



32. The action in terms of BPS automatically comes to an end, if the delinquent employee report for duty within the stipulated period of 30 days from the date of receipt the of first notice, which in the present case, commences from 09.07.1996 and comes to an end on 08.08.1996 and the Petitioner reported on duty on 07.08.1996 i.e., within the stipulated period of 30 days. The occasion to issue the second notice will arise only if an employee, after reporting for duty in response to the first notice, again absents himself within a period of 30 days without submitting any application, which is not the case in the present matter.

33. It has been clearly mentioned in the BPS that despite reporting for duty within the stipulated period provided in the first notice, the Management is well within its rights to take any action against the employee in accordance with law or rules of service, if the Management is not satisfied with the justification/ explanation rendered by the employee after reporting for duty. In the present case, the action of deemed voluntary retirement of the Petitioner has been taken by the Management/ Respondent in terms of BPS after issuance of the second notice. In my opinion, the stage of issuance of the second notice does not arise as the Petitioner has joined his duties within the time period of 30 days as stipulated under the first notice and action, if any, so warranted, could have been taken pursuant to the joining of the Petitioner w.e.f. 07.08.1996 in accordance with law or rules of service. The action of Respondent/Management in not allowing the Petitioner to join his duties despite reporting within the prescribed period of 30 days from the date of issuance of the first notice is *per se* illegal, arbitrary and against the principles of natural justice. The learned Trial Court erred in holding that



the deemed voluntarily retirement of the Petitioner w.e.f. 26.11.1996 without considering the fact that the Petitioner joined his duties within the prescribed time stipulated in terms of the first notice and therefore, the second notice could not have been issued in continuation of the first notice in terms of Clause 17 of the BPS.

34. As rightly observed by the Constitution Bench of the Hon'ble Supreme Court in *Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Ors.* reported as 1991 Supp (1) SCC 600 that right to livelihood cannot hang on to the whims and fancies of individuals in authority. An employment is not a bounty by the authorities nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental.

35. The High Court of Madras in *The Chief Manager, The Lakshmi Vilas Bank Ltd. v. The Presiding Officer, The Central Industrial Tribunal* reported as 2012 SCC Online Mad 3922; while dealing with Clause 17 of the bipartite settlement, held that:-

“42. It is the case of the 2nd respondent/Workmen that on 24.02.1994, he had reported for duty, but he was not permitted to join duty. In view of the discussion, the contention of the petitioner/bank that the second respondent/workman did not report for duty as per Clause 17 of the bipartite settlement dated 10.04.1989 cannot be countenanced. All that is required, is that an explanation should be submitted within 30 days either by reporting in person or submitting an explanation. If the reply is satisfactory, the workman shall be permitted to report for duty, without prejudice to the bank's right, to take any action under law and rules of service. If the explanation is not satisfactory, the Management can order for a regular domestic enquiry.”



36. In view of the aforementioned discussion and settled position of law applied to the facts of the present case, the Award dated 23.07.2008 passed by the Industrial Tribunal and the deemed voluntary retirement of the petitioner is set aside. The Respondent/ Management is directed to reinstate the Petitioner forthwith without back wages. The Petitioner is deemed to be in continuous service on notional basis.

37. Accordingly, the Petition stands allowed. No order as to costs.

GAURANG KANTH, J.

AUGUST 04, 2022

