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W.P.No.39494 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.08.2023

DELIVERED ON : 17.08.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.39494 of 2015
and W.M.P.No.21397 of 2018

M.Samuel Satyendranath

... Petitioner

-Vs-

1. State Bank of India,
represented by its Chief General Manager,
HR Department, Local Head Office,
“Circletop House”, Aparna Complex,
16, College Lane, Chennai-600 006.

2. The General Manager,
Network-II,
State Bank of India,
Local Head Office,
“Circletop House”, Aparna Complex,
16, College Lane, Chennai-600 006.

3. The Regional Manager,
State Bank of India,
Regional Business Office,
25, Swami Nellaiappan High Road,
Tirunelveli-627 001.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India



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for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned orders issued by Respondent 1 and 2 dated 11.07.2014 and 05.12.2012 respectively and quash both the orders and consequently direct the respondents to reinstate the petitioner in service with continuity of service and with all consequential monetary benefits.

For Petitioner : Mr.K.M.Ramesh, Senior Counsel
M/s.R.Sandhya

For Respondents : Mr.C.Mohan
for M/s King and Partridge

ORDER

This Writ Petition has been filed challenging the orders passed by the respondents 1 and 2 dated 11.07.2014 and 05.12.2012 respectively, thereby declared that he had voluntarily vacated his service amounting to voluntary resignation from service with effect from 30.09.2012 and also ordered to pay three months emoluments within 15 days of the receipt of the notice.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

3. The petitioner was appointed as a Clerk on compassionate



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appointment on the demise of his father who was working as Assistant Manager in the respondents' Bank by an order dated 23.09.1992. Thereafter, he was promoted as an Officer on 12.08.2009. Again, he was promoted to the post of Assistant Manager and he was posted in Pavalur Branch, Tirunelveli District, by an order dated 24.10.2009. He failed to take up the new posting, due to the fact that his wife went through tough pregnancies twice and she gave birth to two premature babies. After their birth, both the babies suffered from respiratory problems. Further, his wife is employed in Chennai as a Senior Lecturer in Government Aided Polytechnic College which is a non-transferable job. Therefore, the petitioner was not in a position to shift his family to Pavalur, Tirunelveli District and hence, he requested the higher officials to post him near Chennai.

4. While being so, he was issued with a notice dated 17.03.2010 to the effect that he had absented from duty beyond 90 days and he was directed to report duty within a period of 30 days, failing which, he will be treated as having voluntarily vacated employment. He was posted to Kovilpatti Branch and he was directed to join in Kovilpatti Branch.



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Accordingly, he joined at Kovilpatti Branch on 10.08.2010. Thereafter, he was transferred from Kovilpatti branch to Karungal branch, Kanniyakumari, by an order dated 26.05.2012. However, the petitioner was unable to join the Karungal branch, due to his family circumstances. Therefore, the petitioner was served with a notice dated 31.08.2012 under Rule 40(3) of State Bank Officers Service Regulations, thereby directed the petitioner to report for duty and submit his explanations for his absence. He submitted his explanation. It was not satisfactory and as such the second respondent passed an order dated 05.12.2012 stating that the petitioner had voluntarily vacated his service, which amounts to voluntary resignation from the service of the Bank with effect from 30.09.2012. He was directed to remit three months emoluments within 15 days from the receipt of the order. Aggrieved by the same, the petitioner preferred an appeal before the first respondent and the same was also rejected, confirming the order passed by the second respondent.

5. Mr.K.M.Ramesh, learned Senior Counsel appearing for the petitioner would submit that the petitioner was not given an opportunity of hearing and as such, the impugned order, passed behind the back, is in



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violation of Principles of natural justice. The unauthorized absence is a misconduct which warrants initiation of disciplinary proceedings and establishing guilt through proper evidence. However, this procedure had not been followed before passing the order. The issue viz., whether the absence is willful and wanton, requires material evidence and in the absence of any such material evidence, no conclusion to the said absence being willful can be drawn. The petitioner had expressed his difficulties for his absence. Even then, it was not considered and as such the respondents had acted in a pre-meditated motive, with vindictiveness, against the petitioner. He further submitted that the question of voluntary vacation of service gets attracted only in the event of the employee totally and fully showing his unwillingness to report for duty. The term voluntary vacation of service amounts abandonment for service. The said abandonment was interpreted by the Hon'ble Supreme Court of India in the case of ***G.T.Lad and others Vs Chemicals and Fibers India Ltd***, reported in ***AIR 1979 SC 582***, is always a question of intention and normally, such intention cannot be attributed to an employee without adequate evidence in that behalf. Thus, whether there has been abandonment of service or not is a question of fact which has to be



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determined in the light of surrounding circumstances. Without conducting an enquiry to prove the fact that the petitioner voluntarily abandoned his service, it cannot be deemed to have been proved. In fact, the petitioner had always expressed his intention to continue his employment and he only wanted to transfer to a place near to his place of residence of his family. Therefore, the absence of the petitioner cannot be said that he had an intention to voluntarily vacate his service or relinquish his employment once in for all. Even assuming that the petitioner was absent from duty, the order of voluntary vacation of service causing his termination, is certainly disproportionate from all canons of service jurisprudence.

6. In support of his contention, he had relied upon the Judgments of Hon'ble Supreme Court of India reported in **1979 (1) SCC 590**, in the case of ***G.T.Lad and others Vs Chemicals and Fibers India Ltd***, in **1993 (3) SCC 259**, in the case of ***D.K.Yadav Vs. J.M.A.Industries Ltd***, in **2014 (13) SCC 166**, in the case of ***Chhel Singh Vs MGB Gramin Bank, Pali and others*** and the Judgment of Madhya Pradesh High Court



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in ***W.P.No.4563 of 2000*** in the case of ***Shiv Sharan Sharma Vs Chief General Manager, State Bank of India, Bhopal and others.***

7. A perusal of the counter revealed that an Officer of the Bank holding a responsible post and absenting himself unauthorizedly is detrimental to public interest. Though the petitioner sought for his transfer on medical grounds of his family member, he cannot insist a posting of his choice as orders of transfers of Officers are always made taking into account the exigency of administration and suitability of the officer. Admittedly, when the petitioner was promoted as an Officer from 12.08.2009, he did not join and he made representation for his retention near Chennai. He had absented for a period of 288 days, without any justification. Only after the notice for his unauthorized absence beyond 90 days and his failure to report the duty within 30 days will be regarded as voluntary abandonment of his service and he reported at Kovilpatti branch on 10.08.2010. Thereafter, the transfer of the petitioner is on account of intra region transfer. That apart, the policy of the Bank is that the Officers should serve in a rural and semi urban branch for a period of three years. Therefore, the request of the petitioner could be considered



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only after his completion of his rural and semi urban service. The petitioner was not having any leave to his credit and he had exhausted all leave available to him. He was absenting from 28.05.2012 without even submitting any leave letter. Therefore, the petitioner was served with a notice dated 31.08.2012 and called upon him to report to duty within a period of 30 days.

8. It is relevant to extract the Rules 40(2) and 40(3) of the State Bank Officers Rules, which are as follows:-

“ 40(2) An officer who overstays his leave, except in circumstances beyond his control, shall not be entitled to any salary or allowance for the period of his absence without leave and shall also liable to any of the penalties specified in rule 67 of OSR.

40(3) Where an officer who has not submitted an application for leave, or where an officer having submitted his application was refused sanction of leave, absents himself for a period of 90 or more consecutive days or overstays the sanctioned leave by 90 or more consecutive days notwithstanding the provisions of sub-rule 40(2) of the OSR, the Bank may, at any time thereafter, give a notice to the officer at his last known address available with the bank calling upon him to report for duty within 30 days of the notice. If the officer does not report for duty within the stipulated period, he may, by an order of the Appointing Authority, be deemed to have voluntarily vacated his employment on the expiry of the said period set out in the notice. In such cases, the officer shall also be liable to pay



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the Bank such notice monies as are payable in case of resignation as if he has been permitted to pay the emoluments in lieu of notice.

Provided, however, that an officer may appeal to the competent authority within a period of three years from the date of order recording voluntary vacation under the aforesaid rule. The Competent Authority shall consider such appeal to treat the said order as rescinded if it is satisfied that the officer was prevented by any sickness incapacitating him from reporting for duty within the prescribed time or for any other sufficient cause, and pass such orders as it may deem fit in the circumstances of the case.”

9. Thus, it is clear that the limited enquiry as to whether the employee had sufficient explanation for not reporting to duties will amount to sufficient compliance with the requirements of the Principles of natural justice. Therefore, Rule 40(2) and 40(3) are valid in law. The opportunity to submit explanation for failure to report for work will meet the requirements of natural justice. Admittedly, the petitioner failed to submit any explanation for not obeying the transfer orders. Therefore, the action of the petitioner is a deliberate act, informing that he will not report at Karungal branch if he is not posted to a centre near Chennai. Therefore, it cannot be said that the action of the respondents is premeditated motive or with vindictiveness.



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10. Rule 40(2) and 40(3) of the State Bank Officers Rules contemplates by overstaying leave, the officer will result in non payment of salary or allowance except when the absence was beyond his control. The officer will also be liable for any penalties specified in Rule 67 of the State Bank Officers Rules. Admittedly, the petitioner had no leave to his credit and his continued absence is a misconduct which may result in punishment. The petitioner failed to submit any explanation with proper medical records. Therefore, the Judgment cited by the learned Senior Counsel appearing for the petitioner are not helpful to the case on hand.

11. Further, the petitioner approached this Court after 1 ½ years from the date of order passed by the first respondent, thereby dismissing the appeal filed by the petitioner. There is no explanation for the delay in approaching this Court. Such belated approach gains more significance as the petitioner, being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility, had remained unauthorizedly absent on the pretext of some kind of ill health of his family members.

12. In this regard, the learned counsel for the respondents relied



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upon the Judgment of Hon'ble Supreme Court of India reported in **2014 4 SCC 108** in the case of **Chennai Metropolitan Water Supply and Sewerage Board and others Vs T.T.Murali Babu**, wherein held as follows:-

“In the case at hand, though there has been four years’ delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others’ ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with ‘Kumbhakarna’ or for that matter ‘Rip Van Winkle’. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.”

13. The above Judgment is squarely applicable to the case on hand. The petitioner approached this Court after a period of 1 ½ years from the date of order passed by the first respondent. Therefore, on the



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ground of latches itself this writ petition is liable to be dismissed.

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14. In view of the above, this Court finds no infirmity or illegality in the orders passed by the respondents 1 and 2 and this writ petition is devoid of merits and liable to be dismissed. Accordingly, this writ petition stands dismissed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

17.08.2023

Internet : Yes
Index : Yes
Speaking order
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To

1. The Chief General Manager,
State Bank of India,
HR Department, Local Head Office,
“Circletop House”, Aparna Complex,
16, College Lane, Chennai-600 006.
2. The General Manager,
Network-II,
State Bank of India,
Local Head Office,
“Circletop House”, Aparna Complex,
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State Bank of India,
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G.K.ILANTHIRAIYAN, J.

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Pre-Delivery order made in

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