

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH fresh

RSA-1274-2013 (O&M)
Reserved on:-24.03.2023
Pronounced on:8th May, 2023

State Bank of Patiala and others

..Appellants

Versus

Bhagwan Dass Ahuja

...Respondent

RSA-1275-2013 (O&M)

State Bank of Patiala and others

..Appellants

Versus

Bhagwan Dass Ahuja

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. A.K. Ahuja, Advocate for the appellant-Bank.

Respondent-Bhagwan Dass Ahuja in person.

* * *

Harsimran Singh Sethi, J. (Oral)

1. By this common order, above mentioned two regular second appeals, which involve the same parties and arise out of the same suit, are being disposed of.

2. Present regular second appeals have been filed by the appellant-defendant Bank against the judgment and decree of the trial Court dated

allowed as well as against the judgment and decree of the Lower Appellate Court dated 17.10.2012 by which on an appeal preferred by the respondent-plaintiff, the judgment and decree of the trial Court dated 16.11.2009 has been set aside and the suit filed by the respondent-plaintiff has been allowed qua the relief sought in the suit and the cross-objections filed by the respondent-Bank against the judgment and decree of the trial Court were rejected.

3. Certain facts need to be noticed herein for the correct appreciation of the controversy in question.

4. Respondent-plaintiff was appointed as Clerk on temporary basis in the appellant-bank on 09.09.1971. While working on temporary basis, the respondent-plaintiff was regularly selected and appointed as Clerk on 12.08.1972. On 01.12.1992, respondent-plaintiff was promoted to the post of Junior Management Grade Scale-I and was posted as Assistant Manager in Morinda Branch of the Bank.

5. In October, 1995, without obtaining any leave or permission from the competent authority, the respondent-plaintiff went abroad. On coming to know that respondent-plaintiff had gone to United States of America, letter No.490 dated 16.11.1995 was issued by the appellant-bank directing the respondent-plaintiff to join duties immediately, failing which action will be taken against him for the misconduct. In pursuance to the said letter respondent-plaintiff joined his duty back in December, 1995.

6. In May 1996, respondent-plaintiff vide application dated 11.05.1996 applied for casual leave of one day citing medical grounds and he gave his correspondence address as H.No.2345, Sector 23 Chandigarh. However, as conceded by the respondent-plaintiff, on the very date of his application for

his duty after the expiry of his casual leave. Rather he applied for extension of leave up to 10.06.1996. As the application submitted by the respondent-plaintiff on 11.05.1996 was only for one day casual leave and that too on medical grounds, his application for extension of leave was declined by the appellant-bank on 14.05.1996 and he was directed to join his duty back. As respondent-plaintiff did not join his duty back vide communication dated 16.05.1996 and 22.05.1996, he was informed that as there was no sick leave or privilege leave due to be availed by him keeping in view his last pay certificate, hence, extension of leave cannot be granted and he should immediately join his duty but respondent-plaintiff failed to comply with the said direction.

7. Upon continuous default in joining back duty by respondent-plaintiff, further two notices were sent by the appellant-bank to the respondent-plaintiff on 16.07.1996 and 20.08.1996 calling upon the respondent-plaintiff to report for duty and to furnish explanation for continuous unauthorized absence.

8. As no reply was received from the respondent-plaintiff qua the said notices, final notice was issued to the respondent-plaintiff on 20.03.1997 by the General Manager i.e. the appointing authority of the post on which the respondent-plaintiff was working, stating therein that in case respondent-plaintiff does not join back his duty, it would be presumed that he does not have intention to continue in service and accordingly will be deemed to have voluntarily resigned from service w.e.f 14.05.1996 having abandoned his duties and he will also be liable to pay three months emoluments in lieu of notice required for voluntary resignation.

9. Notice dated 20.03.1997 issued by the bank to respondent-plaintiff

which was sent to him on the last known address as provided by the

respondent/plaintiff himself was received back by the Bank undelivered with remarks "addressee left India".

10. As the respondent-plaintiff did not communicate any other address for communication to appellant-bank upon leaving India, the said notice dated 20.03.1997 was then got published by the appellant-bank in a newspaper on 17.07.1997 for the information and necessary action of the respondent-plaintiff.

11. It may be noticed here that there was no communication from the respondent-plaintiff explaining his unauthorized absence from duty nor in regards to going abroad and he did not join back his duties as directed in the notice dated 20.03.1997. After about one year of publishing of final notice dated 20.03.1997 by the appellant-bank, on 13.06.1998, respondent-plaintiff sent a letter to the bank stating that he was not in a position to join back his duties and sought voluntary retirement from the post in question and also sought benefit of service already rendered by him.

12. Said request of the respondent-plaintiff was not accepted by the appellant-bank as respondent-plaintiff was already deemed to have voluntarily resigned from service having abandoned his duty keeping in view the notice dated 20.03.1997 from the date of abandonment of duty i.e. 14.05.1996 on account of the fact that even after the final notice issued on 20.03.1997 respondent-plaintiff continued to remain absent from duty and did not join back his duties as required under notice dated 20.03.1997.

13. Thereafter, vide letter dated 09.09.1998, the appellant-bank asked the respondent-plaintiff to settle his loan account as at the time respondent-plaintiff stopped performing his duties, he was yet to repay the loan he had taken from the appellant-bank.

15.01.1999 stating that he is ready to clear his loan and is also ready for the settlement of his dues as he intends to set up an industrial unit in Nalagarh, Himachal Pradesh.

15. Thereafter, as per the facts, which have come on record, the amount of provident fund (employee's share only) and gratuity i.e. Rs. 61,704/- and Rs. 1,49,333/-for which the respondent-plaintiff was found entitled for by the appellant-bank, was adjusted against the dues and loan which the respondent-plaintiff was found accountable to pay for, to which no objection was raised and title deeds of the property which was pledged as security to the loan were also received back by the respondent-plaintiff after his loan account was settled.

16. After settling his accounts with the appellant-bank, the decision of the appellant-bank of treating the respondent-plaintiff as having voluntarily resigned from service having abandoned his duty was challenged by the respondent-plaintiff by way of filing a civil suit in the year 2001. In the said suit, respondent-plaintiff pleaded that as he was ready to perform his duties with the bank, hence, it cannot be said that he had abandoned the job so as to be treated as having voluntarily resigned from service and the said action of the appellant-bank, unilaterally deciding on behalf of the respondent-plaintiff that he has voluntarily resigned from service after abandoning his duty is with ulterior motive so as to take away his pensionary benefits hence, the said action is not in accordance with law and is liable to be set aside. Further prayer was made that respondent-plaintiff be treated to have continued in service with all the consequential benefits of promotion along with interest.

17. Upon notice of the suit, appellant-bank brought the detailed facts qua

Unauthorized absence of respondent-plaintiff from duty before the trial Court

as noticed hereinbefore and further it was also mentioned in the written statement that the respondent-plaintiff had got Green Card of America during his stay abroad, thus keeping in view the said facts and circumstances respondent-plaintiff had made clear his intention of not joining back his duties, therefore, by issuing final notice dated 20.03.1997 and after getting it published on 17.07.1997 respondent-plaintiff was treated to have voluntarily resigned from service with effect from the date he remained absent from duty and submitted that in light of the said fact the action of the appellant-bank cannot be treated arbitrary nor illegal.

18. Keeping in view the evidence which came on record and after interpreting the same, the trial Court vide order dated 16.11.2009 came to the conclusion that there were no forced circumstances, which prevented respondent-plaintiff from joining back his duty and in the light of the facts and the evidence which had come on record, the action of the appellant-bank in treating him to have voluntarily resigned from service having abandoned his duty in terms of the notice dated 20.03.1997 was correct and the same was upheld. Trial Court in the judgment and decree also noticed that it is a conceded fact that for a period of two years after leaving India on 11.05.1996 the respondent-plaintiff remained in America and got a green card and though, he pleaded that he was not well during his stay in America however in order to substantiate the same no medical certificate pointing out any ailment was brought on record, hence this fact shows that present is a case of abandonment of duty and the action taken by the bank in view the rules and regulations as well as Circulars of the appellant-bank, especially Ex. D-27 and Ex. D-28, cannot be faulted with. The only relief which was extended to the respondent-plaintiff was that the employer's share of

interest.

19. With regards to the alleged excess amount charged by the appellant-bank from the respondent-plaintiff while settling his account, it was observed by the trial Court that no proof to substantiate the same was adduced by the respondent-plaintiff who himself accepted the settlement as conceded in his cross-examination, hence grievance that the appellant-bank did not settle the loan account in accordance with law, cannot be accepted.

20. Feeling aggrieved against the judgment and decree dated 16.11.2009 of the trial Court, respondent-plaintiff filed an appeal before the Lower Appellate Court. Appellant-Bank also filed counter claim qua the direction given by the trial Court for the release of employer's share of provident fund along with interest before the lower Appellate Court.

21. Vide judgment and decree dated 17.10.2012 of the Lower Appellate Court, the judgment and decree dated 16.11.2009 of the trial Court was set aside on the ground that under the State Bank of Patiala (Officer's) Service Regulations, 1979 (in short, '1979 Service Regulations') there is no punishment envisaged qua voluntary resigning on account of abandonment of duty and further action against the respondent-plaintiff could have only been taken by the appellant-bank after conducting disciplinary proceedings hence, as the action taken by the appellant-bank against the respondent/plaintiff amounts to imposing a major penalty, same could have only been imposed after holding disciplinary proceedings and that too after proving the misconduct, especially when respondent-plaintiff had 25 years of service to his credit up to the said date. The suit filed by the respondent-plaintiff was allowed by the lower Appellate Court by giving liberty to the appellant-bank to hold an enquiry into the allegations of unauthorized

action, if any, only in the light of the findings of fact recorded during the said disciplinary proceedings.

22. Counter claim filed by the bank was also dismissed keeping in view the order passed in the appeal preferred by the respondent-plaintiff thus leading to the present two regular second appeals by the appellant-Bank. One regular second appeal is directed against the order passed by the Lower Appellate Court dated 17.10.2012 in an appeal preferred by the respondent/plaintiff and the second appeal is directed against the rejection of the counter claim by the lower Appellate Court as raised by the appellant-bank.

23. Learned counsel for the appellant as well as respondent-plaintiff, who appears in person were heard and with their able assistance I went through the record.

24. Argument raised by the learned counsel for the appellant-bank is that the actions of the respondent-plaintiff amounts to abandonment of duty without any explanation and had gone abroad and he never joined back duty despite various opportunities extended hence, in the light of circular ExD-28 which was applicable upon him, after serving him due notices as respondent/plaintiff failed to join back his duties, he was deemed to have voluntarily resigned from service having abandoned his job. Therefore, the action of the appellant-bank cannot be faulted with and the lower Appellate Court totally ignored the Circular Ex.D-28 while recording the finding so as to allow the suit filed by the respondent/plaintiff.

25. On the other hand, it has been submitted by the respondent-plaintiff that there was no action on his part which amounted to abandonment of duty and it is not the case that he did not intended to join duty back but he

action could have been taken by the appellant-bank without conducting an enquiry by application of 1979 Service Regulations and proving the misconduct, hence the action taken by the appellant-bank in deeming the respondent-plaintiff as having voluntarily resigned after abandonment of duty is bad in law keeping in view the facts of the present case. Respondent-plaintiff argued that at the most keeping in view the fact that he had 25 years of service to his credit at the retirement time, he could have been compulsorily retired so that he was able to get pensionary benefits.

26. In the present case, concededly the service of respondent-plaintiff is governed by 1979 Regulations. It is also conceded position that the said 1979 Regulations are supplemented by issuance of circulars by the competent authority to fill in gaps and to avoid ambiguity which is permissible under law. It is also a conceded fact that prior to the date when appellant-bank treated the respondent-plaintiff as having voluntarily resigned having abandoned his duty, Ex.D-28 i.e circular clarifying the 1979 Regulations was in operation and was being made applicable by the appellate-bank upon its employees. The said Service Regulations of the year 1979 and the circular Ex.D-28 is to be made applicable keeping in view the facts and circumstances of each case. Circular Ex.D-28 clarifies as to under what circumstances an absence is to be treated as misconduct to be covered under 1979 Regulations and under what circumstances absence is to be treated as abandonment of duty thus forgoing the applicability of 1979 Regulations requiring holding of an enquiry.

27. Before proceeding further, Circular dated 07.11.1988, which is already on record as Ex.D-28 is reproduced hereunder in order to show as to what decision the bank had taken after formulation of 1979 Service Regulations

Service Regulations. The said Circular dated 07.11.1988 is reproduced as under:-

“The rules relating to grant of different kinds of leave to the Supervising Staff were circulated vide circular No. Per 83 of 1982. The basic principle is that leave of any kind cannot be claimed as of right. Also, in terms of the above said circular, 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 be liable to such disciplinary action as the bank may deem fit.

2. It has been experienced in few cases that officers have remained absent from duty for an unduly long period of overstayed the period of sanctioned leave without any follow up action by the controlling authorities who have recommended grant of extraordinary leave without pay/condonation of absence for the intervening period as a fait accompli. In such cases the circumstances in which the employees remained unauthorisedly absent or overstayed the sanctioned leave and in some cases even incommunicado are not examined and much less is done to examine the accountability of the officials dealing with such matters and the controlling authorities concerned. In some cases, after an unauthorized absence of a long period letters are sent to the delinquent officer to report for duty within a fortnight or so failing which his services would be terminated and since the concerned officer reported for a couple of day no further action was taken even although such an employee was happened to be absenting again unauthorisedly. In absence of proper control the possibility of some such officer (s) continuing to draw salary and allowances and other facilities/benefits though on unauthorized absence cannot be ruled out.
3. The matter has been examined by us and it has been decided that the following procedure be followed by the Branch Manager/department Heads to deal with the cases of unauthorized absence of the officers:-

If an officer has remained absent in an unauthorized

manner for say, a period exceeding a week, the authority empowered to sanction leave should send him a letter by registered A.D. with a copy by recorded delivery post at this recorded local/permanent address asking him to report for duty within 2/3 days of the receipt of communication by him and explain the reason for his unauthorized absence (as per annexure-I). The salary for unauthorized absence should also be withheld.

- (ii) In case the officer resumes duties within the stipulated period, the terms on which the unauthorized absence should be treated, should be decided after carefully going into the reasons adduced by the officer. Leave should not be sanctioned as a matter of course, even if it was due where the officer in the habit of absenting himself unauthorizedly appropriate action in terms of State Bank of Patiala (Officer;s) Service Regulation 1979 should be initiated.
- (iii) If the officer does not report for duty even after the expiry of the notice period or the letter addressed to him is received back undelivered, another communication should be sent to him indicating the period of his unauthorized absence and advising him that if he does not report and offer satisfactory explanation for his unauthorized absence within three days of the receipt of letter he would be treated as having voluntarily abandoned duties or resigned from service without giving requisite notice. A draft of the letter to be sent is furnished in annexure-II
- (iv) Before the aforesaid procedure is completed i.e simultaneously with the sending the second communication the authority empowered to sanction leave may seek instructions from his controlling authority at Regional Office/Head Office in regard to the terms on which the absence should be treated.
- (v) If the officer reports within the period of notice and offers satisfactory explanation, he may be allowed to join duty. If the explanation is not satisfactory than also he may be allowed to join duty without prejudice to the rights of the Bank to take such disciplinary action as deemed fit having regard to the nature of the misconduct. A clearance has to be obtained from the competent authority for initiating

disciplinary action.

- (vi) In case the officer still does not report for duty a notice as (per annexure iii) should be sent to him treating that he has voluntarily abandoned his duties and voluntarily resigned his service from the Bank. Before however serving the notice the approval of the appointing authority should be obtained.
- (vii) In the case of officers who were granted study leave for studies abroad or in India or who have not reported for duty after the foreign assignment is over the notices should include claim for the bond amount and such notices issued in consultation with the Law Deptt.
- (viii) After sending the notices as mentioned in Annexure-I, II and III the Branches/Offices should in consultation with the controlling office initiate proceedings for recovery of the loan if any availed by the officer such a Housing Loan Festival Advance, Vehicle Loan, Consumer Loan etc.
- 4. Staff accountability should also be examined in case of lack of control or proper follow up of such cases.
- 5. Branch Managers Departmental Heads at Head Office and Zonal Offices are advised to bring the contents of this circular to the notice of all the officers working under their control and act accordingly even for pending cases where appropriate.”

28. A bare perusal of the above reproduction would show that even after promulgation of 1979 Regulations employees used to abandon their job and then demand the conduct of enquiry before any action could be taken. In order to streamline the said issue, the bank authorities had taken decision that wherever an employee, absents himself/herself without authority from duty but later on join the same on being asked to do so they will be given due opportunity to explain their conduct by conducting disciplinary proceedings and in case it is found that the said absence was unauthorized and was not forced, action for imposing penalties envisages under 1979 Regulations will be undertaken.

29. Further, it is mentioned that where despite giving due opportunities the employee does not join back and continue to remain absent for a long period it will be deemed that employee has voluntarily resigned from service having abandoned duty and no enquiry needs to be conducted under 1979 service regulations before taking the said action.

30. Before proceedings further, it may be noticed that circular Ex.D-28 is not under challenge which gives the power to the bank authority to take appropriate action keeping in view the facts and circumstances of a particular case where an employee is not attending duties voluntarily.

31. It is clear from circular Ex.D-28 reproduced hereinbefore that the disciplinary proceedings under the 1979 Service Regulations is only to be undertaken in case the employee joins back upon asking of the bank, however, where the employee does not join back despite notices by the bank, then the said employee is to be deemed as having voluntarily resigned from service having abandoned his job, thereby not requiring conduct of any disciplinary proceedings under the 1979 Service Regulations.

32. Keeping in view the settled principle of law, the jurisdiction of the Court is to decide the issue keeping in view the rules and circulars, which are applicable. Rules governing the service and the circulars which support the rule are to be interpreted in a manner to give harmonious reading so that either the rules governing the service or the circular issued, lose their intent.

33. Now applying the facts of the present case keeping in view the 1979 regulations and Circular Ex.D-28 of the bank, this Court is to first examine, whether in the facts and circumstances of the present case, the argument of the learned counsel for the appellant-bank is to be accepted by treating the present case as that of abandonment of duty by the respondent-plaintiff

requiring no disciplinary proceedings to be conducted or to accept the argument of the respondent-plaintiff that he was absent from duty so as to be

treated as a misconduct for taking appropriate action under the 1979 Service Regulations by initiating departmental proceedings and thereafter, take appropriate action in case misconduct is proved.

34. From the evidence as well as facts which have come on record, it is a conceded fact that respondent-plaintiff initially went abroad in the year 1995 and that too without availing any or seeking permission for availing ex-India leave. It is only when the appellant-bank informed the respondent-plaintiff that in case he does not join duty, an appropriate action will be taken under the 1979 Service Regulations, in December, 1995 respondent-plaintiff joined back his duties. But again within a period of six months of joining back the duties, by applying one day casual leave on medical ground giving his residential address of Chandigarh, respondent-plaintiff again left India in May, 1996. It has also come on record that his request for extension of leave was declined immediately by the appellant-Bank on 14.05.1996 i.e. within a period of four days of availing casual leave for one day. Alongwith other notices issued to the respondent/plaintiff it has also come on record that vide telegram dated 22.05.1996 respondent-plaintiff was informed that there were no sick or privilege leave due in his credit keeping in view of his last pay certificate thereby not entitling him for any leave hence he was directed to join duty back immediately. It is also not the case of the respondent-plaintiff that his leave was ever sanctioned by the appellant-bank which was being availed by him or he was given permission to avail ex-India leave at any given point of time before he went abroad or even thereafter. It has come on record that two notices were issued by the appellant-bank on last known address furnished by the respondent-plaintiff himself while availing one day casual leave directing him to join back his duty. These two notices dated

plaintiff. Last notice dated 20.03.1997 was issued by the General Manager to the respondent-plaintiff, who was the appointing authority of the respondent-plaintiff stating therein that in case respondent-plaintiff does not join duty back, it will be presumed that he has no intention to continue in service and it will be deemed that he has voluntarily abandoned his duty and will be treated to have voluntarily resigned from his service w.e.f 14.05.1996 and even three months salary in lieu of prior notice will be deducted. The said notice was returned undelivered with remarks "Addressee left India" and the bank ultimately resorted to publish the said notice in newspaper, which appeared on 17.07.1997 asking the respondent-plaintiff to join back duty failing which, as mentioned in the notice dated 20.03.1997, it will be presumed that respondent/plaintiff has voluntarily resigned from service having abandoned his duty. Despite said efforts of the appellant-bank, respondent/plaintiff did not join back.

35.. Facts stated hereinbefore shows that appellant-bank had used all the possible methods to ensure that respondent-plaintiff join back his duties and that too by adopting the procedure as envisaged under the circular Ex.D-28. It is not even the case of the respondent-plaintiff that without giving any opportunity to the respondent-plaintiff to join his duty back, action was taken so as to declare that plaintiff has abandoned his duty by voluntarily resignation.

36. The intention of the respondent-plaintiff as to whether he abandoned his duty or intended to join it back, can also be ascertained from the fact that while in America, the respondent-plaintiff also got a green card so as to live there and earn his livelihood. The assertion of the respondent-plaintiff that he was not well while in America, has also not been proved. Even the allega-

which forced him to go to America is also not proved on the basis of the evidence which has come on record and remained a bald assertion without any evidence. Even otherwise, nothing has come on record as to why, after applying for one day casual leave, the respondent-plaintiff left for America. Also no justifiable reason has come forward from the respondent-plaintiff even during the arguments stating the purpose of living in America for a period of two years. Further, the respondent-plaintiff in his first communication to the appellant-bank after the publishing of notice dated 20.03.1997 in newspaper, vide letter dated 13.06.1998 he sought voluntary retirement alongwith his retiral benefits and there was no effort on his part to join back service even at that stage. These facts which are on record show that there was no intention on the part of respondent-plaintiff to perform the duties with the bank any further hence, the decision of the appellant-bank that the present case is of abandonment of his duty by the respondent-plaintiff cannot be faulted with. Argument of the respondent-plaintiff that he has not abandoned the job cannot be accepted in view of the facts and circumstances noticed hereinbefore. The finding of the Lower Appellate Court that the present is a case of mere absence from duty which amounts to misconduct and not a case of abandonment of job amounting to voluntary resignation, is perverse to the evidence/facts on record.

37. Further, the lower appellate court failed to appreciate the Circular Ex. D-28, which governs the condition of service in the present case while recording a finding that absence from duty is a misconduct and action can only be taken for the same after conducting disciplinary proceedings as required under the 1979 Regulations While recording the findings, the lower Appellate Court totally ignored Ex. D28, which deals with the unauthorized

circumstances when an employee does not join the service even after ample opportunities are afforded. As per Ex.D-28, which is to be read along with 1979 regulations The present case is of abandonment of duty as respondent-plaintiff did not join back duty even after due opportunities, hence disciplinary proceedings need to be conducted under the 1979 Service Regulations before taking action against the employee concerned, hence, the findings recorded by the lower appellate Court are perverse to the evidence on record as well as relevant rules and regulations and circulars which are applicable in the facts and circumstances of the present case.

38. It is required to be noticed that the Court below was only required to analyze the actions of respondent-plaintiff and decision of the appellant-bank in the light of 1979 Service Regulations as well as Circular Ex.D-28 which supplement the 1979 Regulations and then record a finding whether the actions of respondent-plaintiff amounted to a simple misconduct which warranted a disciplinary proceedings under the 1979 Service Regulations before any action was to be taken by appellant-bank or in the facts and circumstance of this case as per Circular Ex.D-28, actions of respondent-plaintiff amounted to voluntarily resignation on account of abandonment of duty in terms of the said Circular Ex.D-28. However the lower Appellate Court only considered 1979 Regulations by treating that Ex.D-28 is not at all applicable, which was beyond the jurisdiction of the lower Appellate Court especially, when there was no challenge to Ex.D-28 at the hands of the respondent-plaintiff, hence lower Appellate Court misdirected its jurisdiction while deciding the issue in hand recording perverse findings by ignoring a relevant evidence and fact on record.

39. The conduct of disciplinary proceedings as per circular Ex. D-28, is

ascertain whether the explanation being given by an employee for unauthorized absence is a valid justification or not in case the said employee joins back the duties. Lower Appellate Court failed to take into consideration the fact that disciplinary proceedings could have only been conducted had the employee joined service back, hence the lower appellate Court made an error while holding appellant-bank liable for not conducting disciplinary proceedings under 1979 Service Regulations before taking action against the respondent-plaintiff as the disciplinary proceeding could only have been ordered if the employee had actually joined back service and tendered an explanation for the absence, which fact is missing in the present case.

40. Law on the issue in hand also needs to be noticed. Hon'ble Supreme Court of India in somewhat similar circumstances while passing order in *SLP (C) No.24220-24221-2007* titled as *Vijay S. Sathaye vs. Indian Airlines Ltd. and others* decided on 06.09.2013 held that there is a difference between termination of service and abandonment of job and the factum of abandonment of service is to be ascertained keeping in view the unilateral action of an employee concerned and where abandonment of service is proved in treating an employee as having resigned and ceased to be in service, no enquiry proceeding needs to be initiated. Relevant paragraphs of the judgment are as under:-

“9.It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.

10. In M/s. Jeewanlal (1929) Ltd., Calcutta v. Its Workmen, AIR 1961 SC 1567, this Court held as under: “.....there would be the class of cases where long unauthorised absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee.” 6 Page 7 (See also: Shahoodul Haque v. The Registrar, Co-operative Societies, Bihar & Anr., AIR 1974 SC 1896).

11. For the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as ‘retrenchment’ from service. (See: State of Haryana v. Om Prakash & Anr., (1998) 8 SCC 733).

12. In Buckingham and Carnatic Co. Ltd. v. Venkatiah & Anr., AIR 1964 SC 1272 while dealing with a similar case, this Court observed : “Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf.” A similar view has been reiterated in G.T. Lad & Ors. v. Chemicals and Fibres India Ltd., AIR 1979 SC 582. 7 Page 8.

13. In Syndicate Bank v. General Secretary, Syndicate Bank Staff Association & Anr., AIR 2000 SC 2198; and Aligarh Muslim University & Ors. v. Mansoor Ali Khan, AIR 2000 SC 2783, this Court ruled that if a person is absent beyond the prescribed period for which leave of any kind can be granted, he should be treated to have resigned and ceases to be in service. In such a case, there is no need to hold an enquiry or to give any notice as it would amount to useless formalities. A similar view has been reiterated in V.C. Banaras Hindu University & Ors. v. Shrikant, AIR 2006 SC 2304; Chief Engineer (Construction) v. Keshava Rao (dead) by Lrs., (2005) 11 SCC 229; and Regional Manager, Bank of Baroda v. Anita Nandrajog, (2009) 9 SCC 462.”

41. Not only this, the same view was reiterated by the Supreme Court of India while passing order in **Civil Appeal No.4588-2014** titled as **State of M.P and others vs. B.S. Bhadoriya** decided on 16.04.2014 wherein, by placing reliance on Vijay S. Sathaye (supra), it was held that where the

service and the bonds of service come to an end automatically without requiring any order to be passed by the employer.

42. Further, a Co-ordinate Bench of this Court in RSA No. 3561 of 1987 titled as ***Prem Nath Vs. United India Insurance Company Limited and others***, decided on 06.01.2012 held that where an employee goes out of India without any valid permission by leaving the job and thereafter, comes back seeking permission to join on the ground that no disciplinary proceedings were held, the said request cannot be accepted and holding of an enquiry in such circumstances would be travesty of law. The judgment in ***Prem Nath's case (supra)*** is as under :-

“This appeal has been filed against the concurrent judgments of both the Courts below dismissing the suit of the appellant for declaration that the order dated 3.7.1979 removing him from service was illegal.

Both the Courts below found that the appellant left the country without obtaining no objection certificate; without getting his leave sanctioned; without leaving any forwarding address, and by making a false statement that he was going to United Kingdom while in fact he was going to Saudi Arabia. Both the Courts below found on fact that the appellant kept on receiving communications to join back but he did not bother to reply. Both the Courts below also found as a fact that the medical certificates sent by the appellant covered only the first one year of his five years' absence. Both the Courts below ultimately relied upon rule 30(iv) of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 which is to the following effect :-

“ Where an employee has abandoned his post, the competent authority may consider the circumstances of the case and pass such orders thereon as it deems fit.

Explanation :

For the purpose of this rule, an employee shall be deemed to have abandoned his post if he absents himself

from duty without leave or overstay his leave for a continuous period of 90 days without any intimation therefor in writing.”

Both the Courts below distinguished the judgment reported as Deokinandan Prasad v. State of Bihar & others, AIR 1971 SC 1409.

Counsel for the appellant has proposed the following questions of law :-

“ (i) Whether the appellant could be dismissed from service under Rule 30(iv) of General Insurance (Conduct, Discipline and Appeal) Rules, 1975 without holding an enquiry ?

(ii) When under Rule 4 of the said Rules, abandonment of service is mis-conduct, whether in such circumstances, it was incumbent upon the punishing authority to hold departmental enquiry for the said misconduct ?

(iii) Whether medical certificate of the appellant which had been duly exhibited could be ignored from consideration merely on the ground that the doctor from Saudi Arabia had not been produced ?

(iv) When the impugned order is void, whether the same can be held to be barred by limitation ?”

Question No. (iii) does not arise since in any case, as mentioned above, medical certificates were only for a period of one year. Questions No.(i), (ii) and (iv) can all be covered under question No. (i). In my considered opinion, question No. (i) has also to be decided against the appellant in the present facts of this case, since it has been established on record that the respondents wrote various letters to the appellant (after tracing out his address in Saudi Arabia) to join back as his leave was not sanctioned but he did not join back. A perusal of Ex.P11, which was a letter written by the appellant, itself reveals that he had been receiving all the letters sent by the respondents. The letter terminating his service dated 3.7.1979 was also sent to his address in Saudi Arabia and in response thereto he filed the instant suit on 23.12.1983 with the bald

averment that he had no knowledge of the letter removing him from service. In these circumstances, the suit filed by the appellant was clearly barred by limitation. To hold that such a recalcitrant employee who was repeatedly ignoring the notices to join could come back after half a decade and file a suit after the period of limitation and would be entitled to an inquiry would be a travesty of law. Consequently, this appeal is dismissed.”

43. Further, as per the settled principle of law the direction to hold an enquiry is to be given keeping in view the facts and circumstances of a particular case. In all the cases, the rules of natural justice cannot be made strictly applicable and that too by ignoring the relevant facts of a particular case and rules and circulars governing the service. In the case of abandonment of job, where the plea was raised to hold an enquiry, where the fact qua absence was not disputed, the Hon'ble Supreme Court of India while passing order in Civil Appeal No. 9676 of 2003 titled as **Viveka Nand Sethi Vs. Chairman, J & K Bank Ltd. and others**, decided on 03.05.2005, held as under :-

“21. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. [See [Dr. Gurjeewan Garewal \(Mrs.\) vs. Dr. Dumitra Dash \(Mrs.\) and Others](#) [(2004) 5 SCC 263]. The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. [See [State of Punjab vs. Jagir Singh](#) (2004) 8 SCC 129] and [Karnataka State Road Transport Corporation & Anr. Vs. S.G. Koturappa & Anr.](#) 2005 (2) SCALE 493].”

44. The mainstay argument of the respondent-plaintiff is only, that he had

vice, he is entitled for benefit of the said service even if the bank has come to the conclusion that he has abandoned the job which will amount to voluntarily resignation. In the event, the premise of the said argument is accepted the same will set a bad precedent. In such a scenario, the employees after rendering pensionable service, will get a free pass to abandon their job being sure that they will be getting the benefit of past service rendered. This will amount to indiscipline and putting the employer at the mercy of employees who could unilaterally without notice decide whether to continue in service or not, thus, putting the working of an institution employing them in chaos. It is for this reason that upon abandonment of duty as per circular ExD-28 an employee has to be treated having voluntarily resigned leading to forfeiture of his past service. Therefore, the benefits, which the respondent-plaintiff is seeking for the service rendered prior to abandonment of duty, are not envisaged under the rules governing his service and cannot be granted.

45. Learned counsel for the appellant-bank has raised the argument that trial Court has granted the benefit of release of a provident fund (employer's share) and that too without citing any rule according to which, an employee, who has resigned, is entitled for the release of the provident fund (employer's share) as well. The trial Court has granted the said benefit to the respondent-plaintiff on the ground that the contribution to the provident fund being a valuable right of the employee, an employee is entitled for same.

46. Qua the said issue raised by the learned counsel for the appellant-bank, it is noticed that the contribution which an employee has done from his own share, the employee is entitled for disbursement of the same however as against employer's share of contribution to provident fund no rule has been brought to the notice of this Court from the evidence which has come on record

that the employee who resigned by voluntarily abandoned the job is entitled for the same. As far as the resignation is concerned, it entails forfeiture of the

past service hence employer's share could not have been directed to be extended to the respondent-plaintiff in the absence of any rule giving such benefit. The trial Court has not mentioned any rules supporting the finding that respondent-plaintiff is entitled for employer's share of provident fund also hence, the said finding is not supported by any rule and cannot be sustained. However, as relief of the release of provident fund (employer's share) is being declined on the ground that no rule has been brought on record to substantiate the said claim, respondent/plaintiff will be free to agitate his claim before the bank authorities by way of filing appropriate representation in case any rule governing the service on the said aspect grants the benefit of the release of provident fund (employer's share) even after resignation and in case any such representation is filed, appellant-bank is under an obligation to decide the said representation within a period of 08 weeks from the date of receipt of the said representation.

47. The last argument which has been raised by the respondent-plaintiff is that loan which was taken by the respondent-plaintiff has been adjusted in the manner which is contrary to the agreement under which the said loan was extended.

48. With regard to the said argument of the respondent-plaintiff the observation of the trial Court are maintained to be correct as have been observed hereinbefore while narrating the facts of the case in para-19 of this order however respondent-plaintiff is granted liberty to avail appropriate remedy available with him in case he is of the view that the rate of interest which was charged by the bank on the pending loan was contrary to the agreement under which the said loan was extended.

49. Keeping in view the facts and circumstances of the present case, the rules and circulars governing the service and the settled principle of law

noticed hereinbefore, the judgments and decrees of the Courts below are not only perverse to the facts/evidence on record but are also contrary to the

settled principle of law and are accordingly set aside. Judgment and decree of the trial Court dated 16.11.2009 granting partial relief of employer's share of provident fund to the respondent-plaintiff is also set aside as the same is a service benefit which get forfeited upon voluntary resignation from service.

50. Both the regular second appeals therefore stand allowed in above terms keeping in view the liberty given in paragraph 46 and 48 and the suit filed by the respondent-plaintiff is dismissed.

CM-3355-C-2013 & CM-3358-C-2013

Applications are disposed of.

Civil Miscellaneous application pending, if any, is also disposed of.

8th May, 2023
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/NO