



WEB COPY

W.A.No.2901 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	10.09.2024
<i>Pronounced on</i>	15.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH**AND****THE HONOURABLE MR. JUSTICE C.KUMARAPPAN**

W.A.No.2901 of 2023
and C.M.P.No.24094 of 2023

Union Bank of India,
Rep. by its Deputy General Manager (Personnel),
Central Office, Union Bank of India,
239, Vidhan Bhavan Marge,
Mumbai – 400 021.

... Appellant

Vs.

1.The Presiding Officer,
Central Government Industrial Tribunal
Cum Labour Court,
Shastri Bhavan, Chennai – 6.

2.M.K.Narayanan

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, praying
to set aside the order dated 09.02.2023 in WP.No.2022 of 2015.

For Appellant : Mr.P.Raghunathan,
for M/s.T.S.Gopalan & Co.

For R1 : Labour Court

For R2 : Mr.Balan Haridas



W.A.No.2901 of 2023

JUDGMENT

M.S.RAMESH, J.

and

C.KUMARAPPAN, J.

For the sake of convenience, the appellant herein is referred to as 'the Bank', the first respondent as 'the Tribunal' and the second respondent as 'the employee'.

2. The employee, who joined the services of the Bank in the year 1961, had remained unauthorizedly absent from 21.11.1995 onwards. Quoting health reasons, the employee had submitted an application for voluntary retirement on 28.11.1995 under Clause 29 of the Union Bank of India (Employees') Pension Regulations, 1995 (hereinafter referred to as 'Pension Regulations'). On 13.09.1996, the Bank claims to have communicated to the employee that his request for voluntary retirement cannot be considered and had called upon him to report for work. Thereafter, the Bank had claimed that the employee had abandoned his service, since he had not reported for work continuously, which prompted him to raise an Industrial Dispute in I.D.No.37 of 2013, before the Central Government Industrial Tribunal cum Labour Court, Chennai. ('the Tribunal'). By an Award dated 12.08.2014, the Tribunal had taken



W.A.No.2901 of 2023

into account the voluntary retirement application filed by the employee dated 28.11.1995 and declared that he is deemed to have retired after three months of receipt of his application and thereby, directed the Bank to pay 50% of the retirement benefits due to him, from the date of retirement, till the date of the Award, within one month, with a default clause for payment of interest on the same @ 9% p.a. The challenge to the Award of the Tribunal before the learned Single Judge of this Court in WP.No.2022 of 2015, was dismissed on 09.02.2023. This order of dismissal of the Writ Petition is assailed in this Intra Court Appeal.

3. The learned counsel appearing for the Bank submitted that the employee had abandoned his services from 21.11.1995 and had remained incommunicado. He had also left his house locked and therefore, even if the reply of refusal to accept his voluntary retirement application had been sent to the address where he was not residing, would only be an empty formality and therefore non-sending of the refusal order of his voluntary retirement application, will not entitle him for the deemed approval. He further submitted that the employee was covered only under the provident fund and had not opted for pension and therefore, he will not be covered under the Pension Regulations. This apart, the learned



W.A.No.2901 of 2023

counsel submitted that there is a delay of 16 years in raising the Industrial Dispute and therefore, the dispute is hit by delay and laches.

4. Per contra, the learned counsel appearing for the employee contended that as per the Proviso to Clause 29(2) of the Pension Regulations, the Bank is obligated to inform the voluntary retirement applicant about refusal to grant permission for retirement, before the expiry of three months and in the absence of such intimation, there is a deemed approval and therefore, the Tribunal had correctly come to the conclusion in this regard. He further added that the learned Single Judge had also rightly appreciated the Award of the Tribunal and had dismissed the Writ Petition and therefore, no interference is required to the said order also.

5. The scheme of voluntary retirement by the employees of the Bank is governed under Clause 29 of the Union Bank of India (Employees') Pension Regulations, 1995. The relevant portions of Clause 29, for the appreciation of the facts of this case, are extracted hereunder:-

“29. Pension on Voluntary Retirement –

1. On or after the 1st day of November 1993, at any



time after the an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority, retire from service:

Provided.....

Provided

Provided.....

2. The notice of voluntary retirement given under sub – Regulation (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

3.....

4.....

5.....

6.....”

6. It is not in dispute that the employee had completed 20 years of qualifying service and is not otherwise disqualified. Therefore, he is eligible to opt for voluntary retirement under Clause 29 of the Pension Regulations.



W.A.No.2901 of 2023

WEB COPY

7. On 28.11.1995, the employee had submitted his application for voluntary retirement under this Clause, which fact is not denied by the Bank. As per the aforesaid Clause, in case the Bank intends to deny approval of the voluntary retirement application to any of its employees, it is obligatory on the part of the Bank, to communicate in writing, such order of refusal to the concerned employee, within a period of three months from the date of application, failing which, the applicant is deemed to have retired from the date of expiry of the period of three months. The applicant claims that the Bank had not given any written communication of refusal to accept the voluntary retirement application, within the said period of three months, which fact is also not in dispute.

8. On the other hand, what is claimed by the Bank is that, since the employee had left his house and his whereabouts were not known, sending any written communication to an address where none of his family members were residing, would only be an empty formality. In this regard, the learned counsel for the Bank had placed reliance on certain inter-office communications between the Regional Office and Zonal Office, where references are found that the employee was not residing in



W.A.No.2901 of 2023

his last known address.

WEB COPY

9. The stand taken by the learned counsel for the Bank is that non-communication of the written refusal of the voluntary retirement application to the employee, would not be fatal, since such a procedure would only be an empty formality. In support of such a claim, the learned counsel had placed reliance on the decisions of the Hon'ble Supreme Court in the cases of '*Canara Bank & others Vs. Debasis Das & others*' reported in '*(2003) 4 SCC 557*' and '*Canara Bank Vs. V.K. Awasthy*' reported in '*(2005) 6 SCC 321*'.

10. The Union Bank of India (Employees') Pension Regulations, 1995, was brought into force in exercise of the powers conferred under Section 19(2)(f) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), after consultation with the Reserve Bank of India and with the previous sanction of the Central Government. The regulations have statutory force and would be binding equally on both the Bank, as well as the employees. For an employee to avail the benefits of Voluntary Retirement Scheme under Clause 29 of the Pension Regulations, he is mandated to give a notice of not less than 3 months in writing to the Appointing Authority, expressing his desire to voluntary



W.A.No.2901 of 2023

retire from service. The second mandate under Clause 29(2) is that, in case where the Bank intends to refuse to grant permission, it is obligated to communicate the same to the employee in writing. Failure to do so would be deemed as grant of permission. This is the only interpretation that could be given to Clause 29 of the Pension Regulations.

11. When the requirements and procedures have been clearly spelt out in Clause 29, there can be no departure from the regulations, which is in the nature of statute. The legal maxim, '*a verbis legis non est recedendum*' means from the words of law, 'there must be no departure'. This legal proposition has been reiterated by the Hon'ble Supreme Court in several of its decisions, including the cases in '**S.P. Gupta Vs. Union of India**' reported in '**AIR 1982 SC 149**'; '**P.K. Unni Vs. Nirmala Industries**' reported in '**AIR 1990 SC 933**'; and '**CIT Vs. Tara Agencies**' reported in '**(2007) 6 SCC 429**'.

12. When Clause 29 of the Pension Regulations stipulates certain requirements and procedures, there cannot be any departure from the same, except to abide by what is contemplated therein. Lest, it would lead to mischievous consequences, causing serious prejudice to the



W.A.No.2901 of 2023

affected party.

WEB COPY

13. In a later decision in the case of '*State of Madhya Pradesh Vs. Narmada Bachao Andolan & another*' reported in '*(2011) 7 SCC 639*', the Hon'ble Supreme Court had extensively dealt with the mode of interpretation of a statute and had observed that the Court has to not only take a pragmatic view, while interpreting a statutory provision, but must also consider the practical aspect of it. After placing reliance on several of its own precedents, touching upon interpretation of statute, it was held thus:-

..... *“84. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. Justice means justice between both the parties. Justice is the virtue, by which the court gives to a man what is his due. Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. The underlying idea is of balance. It means to give to each his right. Therefore, while tempering the justice with mercy, the court has to be very conscious that it has to do justice in exact conformity with the statutory requirements.*

85. Thus, it is evident from the abovereferred law, that the court has to interpret a provision giving it



W.A.No.2901 of 2023

a construction agreeable to reason and justice to all parties concerned, avoiding injustice, irrationality and mischievous consequences. The interpretation so made must not produce unworkable and impracticable results or cause unnecessary hardship, serious inconvenience or anomaly. The court also has to keep in mind the object of the legislation.....”

14. The submission of the learned counsel for the Bank that since the Bank was aware that the employee was not residing in his last known address, sending a written communication of refusal of his voluntary retirement application would be an empty formality, is not only unacceptable, but also irrational. It is not in dispute that no communication was ever sent to the employee, within the period of 3 months from the date of his voluntary retirement application, as mandated under Clause 29. Merely because the Bank had knowledge that the residence of the employee was locked, it will not justify the conclusion of the Bank authorities that the employee is incommunicado.

15. It is needless to point out that when any person, who keeps his house door locked and leaves, is always entitled to leave an alternate



W.A.No.2901 of 2023

address with a postal authority or can authorize any other neighbour or other persons to receive mails on his behalf, from the postal/courier authorities. This alternate method of receiving a written communication can be ascertained, only when a written communication is sent to the employee to the last known address and there can be no presumption of the alternate. It is in this view of the matter, we had remarked on the submission of the Bank that the employee was in incommunicado, as irrational.

16. The submission is also unacceptable to us, since the Bank had failed to perform its obligation, as required under Clause 29 of the Pension Regulations and having failed to do so, it cannot take advantage of its own lapse and attempt to justify its inaction. As already observed by us, when the law requires a thing to be done in a particular manner, there can be no departure from the same.

17. The learned counsel for the Bank, by placing reliance on ***Debasis Das's case (supra)***, submitted that, since the whereabouts of the employee were not known, the notice of rejection of the voluntary retirement application will not improve the situation. Further, in the



W.A.No.2901 of 2023

aforesaid case, the Bank employee therein, who was required to give a written brief to the Inquiry Officer within 10 days, had failed to do so.

So also, he had not sent his submissions on the findings of the Inquiry Officer's report, within 30 days after the inquiry report. When the case was dealt by the High Court, it was found that the inquiry was in violation of the principles of natural justice. The Hon'ble Supreme Court had, however, taken note of the fact that there was no requirement under the Canara Bank Regulations for grant of opportunity of post-decisional hearing and therefore, found fault with the observation of the High Court that there was violation of the principles of natural justice. The Hon'ble Supreme Court had also taken into fact that the employee therein had not pleaded the prejudice caused to him and had thus come to the conclusion that the High Court had not properly interpreted the Canara Bank Regulations.

18. We are not confronted with such facts in the present case and thus, the rulings, as to whether there is violation of principles of natural justice during the course of inquiry, will be of no avail to the Bank.

19. The learned counsel had also placed reliance on *V.K. Awasthy's*



W.A.No.2901 of 2023

case (supra) for the same proposition. Even in this case, the facts are almost similar to ***Debasis Das's case (supra)***, and the question that was adjudicated therein was, as to whether principles of natural justice have been violated and if so, to what extent any prejudice has been caused? Pursuant to this adjudication, the Hon'ble Supreme Court had observed that there were no pleadings related to violation of principles of natural justice, either in the memo of appeal or at the time of personal hearing before the Appellate Authority and thus, had come to the conclusion that there was no violation of principles of natural justice.

20. The present case in hand is not a case where the violation of principles of natural justice is the issue involved. Rather, the violation of the requirements and the procedures contemplated under Clause 29 of the Pension Regulations, is the core issue. As discussed by us hereinbefore, the non-adherence to the procedure would be fatal to the Bank and consequentially, when the Proviso to Clause 29(2) of the Pension Regulations is strictly interpreted, the voluntary retirement application submitted by the employee is deemed to have been accepted by the Bank and therefore, the Award of the Tribunal, which had also held thus, cannot be found fault with.



W.A.No.2901 of 2023

WEB COPY **21.** The learned counsel for the Bank also made a faint attempt to submit that the employee had abandoned his service, since he was continuously absent and therefore, his voluntary retirement application does not deserve consideration.

22. We fail to understand, as to how such a conclusion can be arrived at by the Bank, without following due procedure of law in the given circumstances. In order to declare that an employee has abandoned his service, the employer has to first take into account the unauthorized absence on his part, which by itself would be a misconduct that may warrant initiation of disciplinary proceedings. It is only when the unauthorized absence continues for a considerable length of period, can the employer declare the employee of having abandoned his service. Even to initiate such an inaction, the procedure for terminating his service should be in accordance with the service regulation, apart from following the principles of natural justice.

23. Clause 17 of the Bi-partite Settlement dated 10.04.1989, between the Bank and the employees, provides for the manner in which



W.A.No.2901 of 2023

the Bank can declare voluntary cessation of employment by the employees. As per the settlement clause, when an employee absents himself from work for a period of 90 or more consecutive days, the Bank is required to give a notice to the employee at his last known address, calling upon him to report for duty within 30 days from the date of notice. On receipt of the notice, if the employee does not report for duty or fails to give an explanation, he would be deemed to have abandoned the service.

24. In the instant case, the Bank claims that the employee had last reported for work on 21.11.1995 and thereafter, remained unauthorizedly absent. However, it is admitted by the Bank that on 28.11.1995, the employee had submitted his application for voluntary retirement. Before the Tribunal, the Bank had marked several inter-office communications between the Regional Office and Zonal Office, including the letters dated 21.12.1995, 22.12.1995 and 29.12.1995. The copies of all these inter-office communications have been produced before the Tribunal, as well as this Court. A perusal of which, would reveal that in no such communication, the Bank had taken a stand that the employee had abandoned his service. On the other hand, these inter-office



W.A.No.2901 of 2023

communications touches upon the non-repayment of loans by the employee, instructions for withholding his salary since he had not reported for work, after tendering his application for sick leave on 30.11.1995 and advises to the Regional Office to issue a letter, calling upon him to report for duty and for withholding all his pay and allowances for his unauthorized period of leave. These were the only three inter-office communications marked before the Tribunal, within the period of three months from the date on which the employee had submitted his application for voluntary retirement, during which period, he was deemed to be in the service of the Bank.

25. However, the Bank had marked a notice dated 25.03.1996 before the Tribunal (Ex.M6) and the returned undelivered postal cover (Ex.M7), which is a notice under Clause XVI of the Bi-partite Settlement dated 10.04.1989, calling upon the employee to report for duty within 30 days or submit his application for his absence. This notice has been returned as 'unserved' with an endorsement that the 'party left'. In our view, this notice dated 25.03.1996 itself was a futile exercise on the part of the Bank, in view of the fact that the employer-employee relationship between the Bank and the employee, had ceased to exist on the expiry of



W.A.No.2901 of 2023

three months from 28.11.1995, when the employee had submitted his application seeking for voluntary retirement under Clause 29 of the Pension Regulations, which aspect has already been dealt by us in the preceding portion of this judgment. Hence, the notice dated 25.03.1996 itself is to be rendered as redundant and superfluous. Thus, the exercise undertaken by the Bank to send a notice under Clause XVI of the Bi-partite Settlement for an abandonment of his service, was a futile exercise, since the Bank would have no authority to send such a notice to an employee, who has already retired from service.

26. The plea that the employee had abandoned his service appears to have been taken only in the counter-statement filed by the Bank before the Tribunal in I.D.No.37 of 2013 and not anytime prior to that. This plea, which is an after thought, cannot in any way justify the claim of the Bank, which fails to adhere to the well settled principles of service and labour jurisprudence while declaring an employee of having abandoned service and thereby, terminating his services. The Bank had failed to produce even a single document before the Tribunal that they have at least taken a decision to terminate his service on the ground that he has abandoned his service. Having failed to do so, it would not now be open



W.A.No.2901 of 2023

to canvas such a plea, merely on the strength of the averment made in the counter-statement in this regard.

27. The learned counsel for the Bank also claimed that since the employee was covered under the Provident Fund Scheme and had not opted for pension, he would not be eligible for coverage under the Pension Regulations. Apart from making such a vague claim, no materials have been produced before the Tribunal or this Court to demonstrate the inapplicability of Clause 29 of the Pension Regulations to the employees who are covered under the Provident Fund Scheme. Even Clause 29 does not provide for exceptions for ineligibility to the employees covered under the Provident Fund Scheme. In the absence of the same, we are unable to appreciate this stand of the Bank.

28. The learned counsel for the Bank also made a faint attempt to discredit the employee's case by claiming that the Industrial Dispute raised by him in the year 2013, is hit by delay and laches, for which proposition, he placed reliance on the decisions of the Hon'ble Supreme Court in the cases of '*Assistant Executive Engineer, Karnataka Vs. Shivalinga*' reported in '*(2002) 10 SCC 167*'; '*Assistant Engineer, CAD,*



W.A.No.2901 of 2023

Kota Vs. Dhan Kunwar' reported in '**(2006) 5 SCC 481**'. By referring to these decisions and a couple of similar decisions of the Hon'ble Supreme Court, the learned counsel for the Bank submitted that even though the Industrial Disputes Act, 1947, does not provide for a limitation, the Hon'ble Supreme Court had frowned upon an inordinate delay on the part of the workman in raising a dispute, in cases touching upon the conditions of service of the workman.

29. There is no quarrel on the legal proposition propounded by the Hon'ble Supreme Court, touching upon delay and laches. But what would be pertinent for consideration of such a plea, is to ascertain the period of delay commencing from the cause of action.

30. As discussed earlier, the employee is deemed to have retired from the services, on completion of three months from the date of his voluntary retirement application. Thereafter, it was only the Bank which was at fault in failing to take steps to relieve him under the voluntary retirement scheme, by disbursing his retirement benefits. Neither the decision of refusal of his voluntary retirement application, nor the claim that the employee had abandoned his services, were discharged by the



W.A.No.2901 of 2023

Bank, in accordance with the Bank's Regulations or in a manner known to law. It is only after several years, was the employee made aware of the illegal termination of his services, when his cause of action arose and thereafter, he had raised the Industrial Dispute, within a reasonable time. Hence, it cannot be said that the Dispute was raised after an inordinate delay.

31. The Tribunal had, on the basis of the materials available on record and on appreciation of such evidences, had rightly declared that the employee is deemed to have retired after 3 months from the date of receipt of the application for voluntary retirement and had passed consequential orders in its Award. The learned Single Judge had also found that there was no perversity in the findings of the Award of the Tribunal and had confirmed the same.

32. In the light of our observations and findings, we do not find any reason to interfere with either the order of the learned Single Judge dated 09.02.2023 passed in W.P.No.2022 of 2015, or the Award of the Tribunal dated 12.08.2014 passed in I.D.No.37 of 2013.



W.A.No.2901 of 2023

WEB COPY 33. Accordingly, the Writ Appeal stands dismissed. No costs.

Connected miscellaneous petition is closed.

[M.S.R., J] [C.K., J]

15.11.2024

Index: Yes

Neutral Citation: Yes

Speaking order

Sni

To

The Presiding Officer,
Central Government Industrial Tribunal
Cum Labour Court,
Shastri Bhavan, Chennai – 6.



WEB COPY



W.A.No.2901 of 2023

M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

Sni

Pre-delivery judgment made in
W.A.No.2901 of 2023

15.11.2024