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W.A.No.1057 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2024

CORAM

**THE HONONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONONOURABLE MR. JUSTICE P.DHANABAL**

W.A.No.1057 of 2014

A.Veeramani,
S/o Annamalai

... Appellant

Vs.

1. The Presiding Officer,
Central Government Industrial Tribunal,
Shastri Bhavan, Haddows Road,
Nungambakkam,
Chennai - 600 034.

2. The Chairman cum Managing Director,
Indian Overseas Bank,
Anna Salai,
Chennai - 600 006.

...Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the
order passed by this Court in W.P.No.38591 of 2005 of 2014 dated
07.04.2014.

For Appellant : Mr.Thomas T.Jacob

For Respondent : R1 - Tribunal.
Mr.K.Srinivasamoorthy for R2

J U D G M E N T



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(The judgment of the Court was delivered by J.Nisha Banu,J.)
This Writ Appeal has been filed challenging the order passed by the learned single Judge of this Court in W.P.No.38591 of 2005 dated 07.04.2014, by which, the award passed by the labour Court that the decision taken by the Bank to treat the appellant herein as deemed to have voluntarily retired from service, was confirmed.

2. The brief facts of the case of the appellant are as follows:

The appellant was appointed as a Messenger in the 2nd respondent Bank since in the year 1990. Due to illness, he absented from service for ten months and ten days. The bank declared the appellant that he was voluntarily retired from service by invoking Clause XVII of Bi-partite settlement. The appellant challenged the same before the Labour Court and the labour Court confirmed the order of compulsory retirement. The writ petition filed against the same was also dismissed by the learned single Judge of this Court. Hence, the present appeal challenging the order passed in the writ petition.

3. (i) Learned counsel for the appellant would state that no notice was served on the appellant before invoking Clause 17 of Bipartite



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settlement. He would further submit that even as per the documentary evidence Ex.W12 letter in which at para 2, it was stated that the appellant has already sent letter on 16.07.1999 under certificate of posting intimating the change of address and the same was not denied by the Bank.

(ii) Learned counsel for the appellant would further state that no notice was served before taking a decision by the Bank. Ex.M4 series, notice sent under the settlement clause was not at all served on him, instead, it is seen that it was returned with endorsement 'left door locked' and therefore, it cannot be treated as a valid service of notice in the eye of law.

(iii) Learned counsel would further submit that even as per the Bi-partite settlement only in case of desertion without any intimation by the employee for more than 90 days, notice can be sent by the Bank to the last known address of the employee to report for duty within 30 days or ask for explanation from the employee. In this case, the employee had intimated about his absence. He had sent two letters seeking leave.



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Therefore, clause 17 cannot be invoked by the respondent Bank.

Therefore, the order passed by the Bank is unsustainable and he would state that the appellant is entitled for reinstatement into service with all monetary benefits.

4. (i) Per contra, the learned counsel Standing Counsel appearing for the respondent Bank would state that the appellant's attendance was very poor. He frequently absented himself unauthorisedly from the Bank. Even as early as February 1996, he was issued with charge memo on 11.05.1996 for remaining unauthorisedly absent from 05.02.1996 onwards. He submitted a reply on 30.05.1996 which was considered by the bank and taking a lenient view, he was given punishment of censure. Despite this, he did not improve. The second charge memo was issued in the same year on 17.12.1996 for remaining unauthorisedly absent for the period, August 5 to 7, 1996 - 3 days, August 23 to 31, 1996 - 9 days, October 29 to 31, 1996 - 3 days and November 1 to 26, 1996 - 26 days. His reply dated 27.04.1997 was found not satisfactory.

(ii) Learned counsel would further state that after issuance of



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show cause notice, the final order has been passed on 30.05.1997 and he was cautioned that if it is repeated, serious view would be taken. However, again, he started absenting himself from 05.02.1999. The appellant was put on notice on 15.09.1999 but he did not choose to report for duty within 30 days nor did he give any satisfactory explanation for his absence. He would further submit that even after production of fitness certificate (Ex.W7) dated 03.06.1999, he did not join duty. He remained absent from 05.02.1999. Therefore, the bank sent notice dated 15.09.1999 invoking Clause-17 of the settlement advising the appellant to report for duty within 30 days, failing which, it would be treated that the appellant had voluntarily retired from service on his own accord.

(iii) Learned counsel would further state that earlier, the bank had sent two letters one, was on 26.06.1999 and the other, on 13.07.1999. In spite of having received the same, the appellant did not report for duty or sent reply to the same. The notice issued under clause 17 of the settlement on 15.09.1999 was returned with an endorsement 'left-door locked'. Therefore, the bank passed the final order dated 25.10.1999 removing his name from the rolls on the ground that he had voluntarily



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retired from service. Thus, the Bank had strictly complied with the provisions of Clause 17 of the Settlement. Hence, the learned single Judge has observed that there is absolutely no reason made out warranting any interference into the decision of the bank as confirmed by the Labour Court. Therefore, the learned counsel prayed to dismiss the appeal.

5. Heard the learned counsel appearing on either side and perused the material available on record.

6. It is not in dispute that the appellant remained absent from duty between 05.02.1999 and 15.12.1999. The previous record of the appellant/employee was also not satisfactory. A charge memo was issued on 11.05.1996 for remaining unauthorisedly absent from 05.02.1996 onwards and after taking a lenient view, the Bank had given punishment of censure. Again, he started absenting himself from 05.02.1999. The appellant was put on notice on 15.09.1999 but he did not choose to report for duty within 30 days nor did he give any satisfactory explanation for his absence. Further, though it is case of the appellant that for the purpose



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of his treatment, he had shifted to different address and the same was intimated to the bank by way of letter dated 16.07.1999 sent under certificate of posting, he did not state about the same in the claim petition as well as in the writ petition.

7. It is also seen from the records that the two letters dated nil along with one medical certificates and the fitness certificates are not in the prescribed form. Even though the same was intimated to the appellant, there was no reply\explanation from the appellant. Even after production of fitness certificate (Ex.W7) dated 03.06.1999, he did not join for duty. The appellant did not sent any reply/explanation for the notices dated 26.06.1999, 13.07.1999, 15.09.1999 and 25.10.1999 sent by the Bank.

8. In case, if the appellant has submitted explanation and the explanation is not satisfactory, an enquiry can be conducted. In the present case, no enquiry is necessary. Admittedly, the appellant did not communicate with the bank as he did not sent any reply or explanation to the notices dated 26.06.1999, 13.07.1999, 15.09.1999 and 25.10.1999.



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The Bank had strictly followed the procedures contemplated under the Bi-partite settlement and had rightly held that the appellant has voluntarily retired from service of the Bank. Therefore, we find no illegality or infirmity in the order passed by the learned single Judge and the same does not warrant any interference.

9. In the result, the Writ Appeal stands dismissed. No costs.

(J.N.B,J.) (P.D.B., J.)
12.04.2024

Index : Yes / No
Internet : Yes
vsi

To

The Presiding Officer,
II Additional Labour Court,
Chennai.

J. NISHA BANU, J.
and
P.DHANABAL, J.



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