

GAHC020001582023

2025:GAU-NL:9-DB



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : WA/5/2023

THE DEPUTY GENERAL MANAGER(B AND O), STATE BANK OF
INDIA AND 5 ORS
ADMINISTRATIVE OFFICE AT JORHAT,
NEHRU PARK, DISTRICT - JORHAT, ASSAM,
PIN - 785001

2: THE REGIONAL MANAGER
STATE BANK OF INDIA

REGIONAL BUSINESS OFFICE AT DIMAPUR

SHOPPING COMPLEX
KOHIMA ROAD

DISTRICT - DIMAPUR
NAGALAND

PIN - 797112

3: THE APPOINTING AUTHORITY
STATE BANK OF INDIA

DIMAPUR
SHOPPING COMPLEX
KOHIMA ROAD

DISTRICT - DIMAPUR
NAGALAND

PIN - 797112

4: THE CHIEF MANAGER
STATE BANK OF INDIA

MOKOKCHUNG BRANCH
SANGTEMA WARD

DISTRICT - MOKOKCHUNG
NAGALAND

PIN - 798601

5: THE BRANCH MANAGER
STATE BANK OF INDIA

MOKOKCHUNG MAIN BRANCH

DISTRICT - MOKOKCHUNG
NAGALAND

PIN - 798601

6: THE BRANCH MANAGER
STATE BANK OF INDIA

PHEK BRANCH
DISTRICT - PHEK
NAGALAND

PIN - 79710

VERSUS

SHRI. P.P. SANI ALIAS SANI P.P AND ANR
S/O LATE N. SANI,
R/O MAO GATE, P.O AND P.S. MOA,
DISTRICT SENAPATI, MANIPUR,
PIN - 795150

2:THE ACCOUNTANT GENERAL

O/O THE PRINCIPAL ACCOUNTANT GENERAL(A AND E)

DISTRICT - KOHIMA
NAGALAND

PIN - 79700

Advocate for the Petitioner : Y.P. GUPTA, G ALAM

Advocate for the Respondent : R A RONGMEI, PAKINRICHAPBO (R-1)

Linked Case : I.A.(Civil)/44/2023

THE DEPUTY GENERAL MANAGER(B AND O)
STATE BANK OF INDIA AND 5 ORS
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6: THE BRANCH MANAGER
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PHEK BRANCH
DISTRICT - PHEK
NAGALAND

PIN - 797108
VERSUS

SHRI. P.P. SANI ALIAS SANI P.P AND ANR
S/O LATE N. SANI

R/O MAO GATE
P.O AND P.S. MOA

DISTRICT SENAPATI
MANIPUR

PIN - 795150

2:THE ACCOUNTANT GENERAL

O/O THE PRINCIPAL ACCOUNTANT GENERAL(A AND E)

DISTRICT - KOHIMA
NAGALAND

PIN - 797001

Advocate for : Y.P. GUPTA
Advocate for : appearing for SHRI. P.P. SANI ALIAS SANI P.P AND ANR

BEFORE
HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA
HON'BLE MR. JUSTICE BUDI HABUNG

JUDGMENT & ORDER (CAV)

Date : 24-01-2025

(Budi Habung, J.)

Heard Mr. J. Alam, learned counsel assisted by Mr. Gupta, learned counsel for the appellants. Also heard Mr. R.A. Rongmei, learned counsel appearing for the respondent.

2. This intra-court appeal is filed against the Judgment and Order dated 27.03.2023, issued by the learned Single Judge in WP(C)/117(K)/2019. In the said Judgment and Order, the learned Single Judge, directed that the petitioner be considered for invalid pension as permissible under the rules. The respondent/appellant is directed to constitute a Medical Board to examine the petitioner's medical condition as per Clause 2.6 (g) of the Manual, within one month from receiving a certified copy of the Order. The Board is further directed to complete the examination within two months of its constitution. In the event the Board determine that the petitioner is and was medically unfit for service, the Report be submitted to the Regional Manager of the State Bank of India, Dimapur, Nagaland, for a decision by the appropriate authority regarding the petitioner's entitlement to Invalid Pension. Moreover, the Bank is directed to consider this matter expeditiously, preferably within two months from receiving the Medical Report from the constituted Board. If the petitioner is found entitled for Invalid Pension, it shall be

granted without delay.

3. The facts leading to the present appeal can be summarized as follows: the petitioner/respondent was appointed to the clerical cadre of the State Bank of India (Hereinafter referred to as "the Bank"). He joined the Bank as Cashier cum Clerk on 18.03.1991. His service was under probation for six months, and he was confirmed on 18.09.1991. He was subsequently promoted Senior Assistant effective from 11.07.2006.

However, due to misconduct, the writ petitioner/respondent was suspended from 25.04.1998 to 31.05.2002. His suspension was subsequently reviewed, and he was reinstated, with the suspension period treated as not on duty, meaning no salary or allowance were payable to him, as per the Memorandum dated 10.04.2002 issued by the Deputy General Manager and Disciplinary Authority. He received the punishment of "warning" though the subsistence allowance paid during his suspension was not recovered.

4. While posted at Mokokchung Branch, the petitioner/respondent did not apply for Leave or obtain any appropriate sanction. He remained absent from duty without prior approval starting from 10.10.2006. Due to continuous unauthorized absence, the appellant Bank issued three Notices *vide* Memorandums dated 03.11.2006, 04.12.2006, and 05.01.2007 as per the 8th Bipartite Settlement and Bank's Circular No. CDO/PNHRD/IR/26 dated 21.07.2005. These notices

called upon him to report for duty within 30 (thirty) days and provided him an opportunity to explain his absence. However, the writ petitioner/respondent did not respond to any of the Notices and continued to be absent without authorization.

5. Since the writ petitioner/respondent failed to report for duty despite the three Notices issued within the stipulated time and remained absent without prior sanction, his name was struck off from the rolls of the establishment. This action deemed that he had no intent to work for the Bank, leading to a voluntary cessation of his employment effective from 10.10.2006- the date he began his unauthorized absence without any prior leave approval. This was in accordance with the terms of 8th Bipartite Settlements and Bank's Circular No. CDO/PNHRD/IR/26 dated 21.07.2005. The petitioner/respondent was duly informed of this action.

6. The writ petitioner/respondent did not contest the Bank's decision regarding his voluntary cessation of employment, either before Bank authorities or in any court of law. However, he admitted to his voluntary cessation and submitted an application to the Trustee of the SBI Employees' Provident Fund, Mumbai, for the payment of his Provident Fund amount *vide* Letter dated 12.10.2011. additionally, he applied for Gratuity payment to the Chief General Manager, Guwahati, through a letter dated 29.03.2012. In response to these Letters, the Bank authorities issued communications dated 12.10.2011 and 29.03.2012, respectively, regarding he payment of the Provident Fund and

Gratuity. An amount of Rs. 2,60,394/- (Rupees Two lakh sixty thousand three hundred and ninety-four) was sanctioned and paid under the Provident Fund, and Rs. 63,779/- (Rupees Sixty-three thousand seven hundred and seventy-nine) was approved for Gratuity after the recovery of the Bank's due. Thus, the voluntary cessation of employment of the respondent's employment has been finalized since 10.10.2006.

7. However, by filing writ petition, the writ petitioner/respondent had claimed that he began experiencing an eye problem characterized by blurred vision in both eyes. He continues to discharge his duties in the Department until September 2006, although he was not consistently regular during this period. His condition worsened in the first quarter of 2007, prompting him to consult the Bank's Medical Officer at the Regional Office of SBI Dimapur on 14.03.2007. The Medical Officer referred him to Guwahati for further treatment by an eye specialist, as stated in certificate dated 14.03.2007. At Guwahati, he met with the Bank's Doctor stationed at the local Head Office, who advised him to consult an eye specialist at Nemcare Hospital. He was admitted in the hospital on 28.03.2007, with instruction to return for further treatment after three months. Due to financial constraints, he sought a referral for treatment outside the state of Nagaland from the Office of the Medical Superintendent at Naga Hospital, Kohima.

8. The writ petitioner also contended that although he was referred to Nemcare Hospital by the Bank's Medical Doctor, he

continued his eye treatment at Naga Hospital, Kohima, due to financial constraints. While receiving treatment, he learnt about the Memorandum dated 11.07.2009, which initiated his voluntary cessation of employment effective from 10.10.2006.

9. Subsequently, the writ petitioner submitted a Representation dated 10.11.2014, requesting the grant of an Invalid Pension on medical grounds. He claimed that he was issued a Permanent Disability Certificate dated 04.04.2017 by the Medical Doctor at Naga Hospital Authority, Kohima, indicating that he has 20/40% disability in the category of "Low Vision" with further certification that the condition is not likely to improve. However, his representation dated 10.11.2014 was denied by the Branch Manager, Mokokchung citing that he does not qualify for Invalid Pension as he voluntarily retired/vacated his appointment.

10. Being aggrieved, the writ petitioner/respondent filed the writ petition WP(C)/117(K)/2019 before the learned Single Bench of this Court, praying specifically for a direction to the respondents to approve the Representation dated 10.1.2014 for Invalid Pension under Rule 38 of the Central Civil Service Pension Rules, 1972 and/or for grant of pension and gratuity under Rule 40 of the Central Civil Service (Pension) Rules, 1972.

11. The learned Single Judge, upon hearing the parties, observed that the writ petitioner/respondent should be considered for the grant of Invalid Pension as permissible under the rules. This was on Clause 2.6 (g) of the HR Handbook (Vol. 2) issued by the Human Resources Department, State Bank of

India Corporate Center, Mumbai. The learned single directed the respondent /appellants to constitute a medical board to examine the medical condition of the writ petitioner in terms of Clause 2.6 (g) of the Manual within one month from the date of receipt of the certified copy of the order. The writ petitioner was at liberty to produce any relevant documents he had for the Board's consideration. The Board was directed to complete its examination within two months from the date of its constitution. If the Board concluded that the petitioner was and is medically unfit for service, the report should be submitted to the Regional Manager, SBI Dimapur, for a decision by the appropriate authority of the Bank regarding the petitioner's eligibility for Invalid Pension. Such consideration should be concluded expeditiously by the Banks authorities, preferably within two months from the receipt of medical report from the constituted. If the petitioner is found entitled for Invalid Pension, it should be granted without delay.

12. Being aggrieved the appellant preferred this appeal on the following grounds:

- i) That the learned Single Judge erred in appreciating the fact that the case of the writ petitioner/respondent was of voluntary cessation of employment, and according to the applicable pension rules, an employee who voluntarily vacates their employment is not eligible for pension.
- ii) That the writ petitioner/respondent never challenged the Bank's decision of voluntary cessation of his employment,

either before the bank or before any other authority or court of law; therefore, the decision has attained finality. Consequently, the writ petitioner/respondent is only eligible for benefits permissible to the employee who voluntarily vacated their employment and none other.

iii) That the services of each employee are covered by their own service conditions, and any pension or other allowances not permitted by the rules cannot be granted to the employee. As such, the relief granted to the petitioner/respondent and the impugned Order dated 27.03.2023 is unsustainable.

iv) In the light of the facts and circumstances of the case, the learned Single Judge ought to have considered Clause 2.7 instead of 2.6 (g) of the HR Handbook (Vol. 2), issued by the Human Resource Department, SBI Corporate Center, Mumbai. This clause stipulates that when an employee absents from work for a period of 90 (ninety) or more consecutive days without prior approval from a competent authority, or beyond the period of leave sanctioned (including any extension), or when there is satisfactory evidence of employment either in India or abroad, the management may send a notice to the employee at their last known address as recorded with the Bank calling upon him to report for work within 30 (thirty) days. If the employee fails to report for work within this period or does not provide an explanation for their absence that satisfies the Management, including a statement that they have not taken up other employment or avocation, the

employee will receive a further notice for report for work within an additional 30 (thirty) days. Failure to comply will be deemed as a voluntary vacation from employment upon the expiry of the notice period. In this case, the writ petitioner/respondent admitted to voluntarily vacating his employment with the Bank on 10.10.2006, acknowledging continuous absence from duty since that date. Consequently, the guiding for pension eligibility for the writ petitioner should be derived from Clause 2.7.1 of the Handbook, which deals with pension grants to employees who have voluntarily ceased their service with the Bank. However, this aspect was overlooked by the learned Single Judge when issuing the impugned Order dated 27.03.2023.

v) Th writ petitioner/respondent has neither disputed the fact that he was unauthorizedly absent from duty since 10.10.2006, without leave or appropriate sanction, nor has he challenged his voluntary vacation from service in any appropriate forum. Rather, he admitted to his voluntary vacation from Bank's service on 10.10.2006, as indicated in his Letter dated 10.12.2011 and 29.03.2012, respectively, in which he sought payment of his Provident Fund and Gratuity. However, this aspect of the matter completely overlooked by the learned Single Judge while passing the impugned Order dated 27.03.2023.

vi) That the case of the writ petitioner is of voluntary vacation/cessation from services due to unauthorized absence

from his duties and such vacation of employment due to unauthorized absence cannot be construed to be a voluntary retirement on medical condition. In fact, the voluntary vacation/cessation from services and the voluntary retirement on medical condition are two different ways and means of retiring from service, and both are independent to each other. Since the writ petitioner/respondent had already admitted to be voluntarily vacated/ceased from service on 10.10.2006 due to his own absence from duty, he cannot be considered for voluntary retirement on medical condition. However, this aspect of the matter was not at all considered by the learned Single Judge while passing the impugned Order dated 27.03.2023.

vii) The provision for payment of proportionate pension requires the employee to be examined by a Medical Board, after which the competent authority takes a decision regarding the employee's retirement on medical grounds due to incapacity. This process amounts to voluntary retirement on medical grounds. However, in the instant case, the writ petitioner/respondent did not approach the Bank for voluntary retirement on medical grounds during his active service. Instead, he remained absent from duty without leave approval and eventually voluntarily vacated and ceased service on 10.10.2006. Under these circumstances, the constitution of the Medical Board to examine the writ petitioner/respondent for fitness at this stage is not in accordance with the provisions

mandated in the State Bank of India Employees' Pension Fund Rules or any other applicable guidelines or rules. Furthermore, the learned Single Judge failed to appreciate this aspect while passing the impugned Order dated 27.03.2023.

viii) The provisions for proportionate pension apply only to employees who are retired on medical grounds. Under no circumstances can these be applied to an employee who remained absent from duty and voluntarily vacated his employment. Thus, the learned Single Judge failed to appreciate Rule 22 of the SBI Employees Pension Fund Rules in its proper perspective.

ix) The Bank is a statutory body, and all its employees are covered by the Bank's service rules and regulations. The writ petitioner/respondent was paid his gratuity and Provident Fund amount according to the applicable rules. Furthermore, he was found ineligible for pension as per Rule 22 of the SBI Employees Pension Fund Rules, and his application was therefore rejected. The writ petitioner/respondent is claiming the Invalid Pension under Central Service (Pension) Rules, which do not apply to Bank's employees since the pension scheme outlined in the State Bank of India Employees' Pension Fund Rules is a complete code. Consequently, there can be no departure from the conditions specified in Rule 22 of the Pension Fund Rules.

x) According to the writ petitioner/respondent, he attended and visited the Bank's Doctor on the Bank's premises for eye

treatment even after being continuously absent from his duties since 10.10.2006. Despite receiving three notices calling upon him to report for duty, he did not approach the Bank to explain his absence or challenge the order of voluntary cessation of his employment. Instead, the writ petitioner/respondent accepted the voluntary cessation of his employment. However, the Hon'ble Single Judge overlooked this fact and passed the impugned Order dated 27.03.2023, which is not sustainable and liable to be quashed.

xi) That the learned Single Judge, while passing the impugned Judgment, recorded that the Order of voluntary vacation/cessation by the writ petitioner/respondent had attained finality on 10.10.2006. At the same time, he failed to appreciate that the directions issued in the judgment and Order dated 27.03.2023 effectively nullified this finality, thereby causing miscarriage of justice.

For the reasons stated above, the learned counsel for the appellant prays that the impugned Order dated 27.03.2023 passed in WP(C)/117(K)/2019, be set aside and quashed.

13. In support of his submission, the learned counsel for the appellant relied upon the following decisions of the Hon'ble Supreme Court:

a) *Punjab & Sind Bank & Ors. Versus Sakattar Singh* reported in **(2001) 1 SCC 214**. The relevant paragraph nos. 4 and 5 are reproduced below:

“4. A reading of clause XVI of IV Bipartite Settlement will make it clear that in the event an employee absents himself from duty for 90 or

more consecutive days beyond the period of leave originally sanctioned or subsequently extended the Management may, at any time thereafter, give a notice to the employee at the last known address calling upon him to report for duty within 30 days of notice stating, inter alia, the grounds for the Management coming to the conclusion that the employee has no intention of joining duty and furnishing necessary evidence wherever relevant and unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence satisfying the Management that he has not taken up another employment or avocation and he has no intention of not joining the duty, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the time fixed in the said notice. In the event of the employee giving a satisfactory reply, he will be permitted to report for duty thereafter within 30 days from the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service. Under this Rule the employee is given an opportunity to rejoin duty within a stipulated time or explain his position to the satisfaction of the Management that he has no intention of not joining duty, and a presumption will be drawn that the employee does not require the job anymore and will stand retired from service. Thus, there is no punishment for misconduct but only to notice the realities of the situation resulting from long absence of an employee from work with no satisfactory explanation thereto. The principles of natural justice cannot be examined in vacuum without reference to the fact - situation arising in the case. This Rule has been incorporated in an agreement where representatives of employee's unions were party. They also realized the futility of continuing a situation when an employee without appropriate intimation to the management is playing truant.

5. If the respondent had submitted an explanation regarding his unauthorised absence or placed any material before the court that he did report for duty but was not allowed to join duty, inquiry may have been necessitated but not otherwise. In this case, the employee-respondent had defaulted in not offering any explanation regarding his unauthorised absence from duty nor did he place any material to show that he reported for duty within 30 days of notice as required by clause XVI of IV Bipartite Settlement. Thus, we think that the contention put forward on behalf of the respondent that he was suffering from serious eye ailment at the relevant time is difficult of acceptance. In the writ petition filed before the High Court the respondent had stated that in the year 1980 he had a serious eye ailment and he had been taking leave from the bank often and on and he had taken leave from 16.8.1993 to 18.8.1993 to attend some urgent work which was duly sanctioned but he was struck by eye ailment and, therefore, he could not join his duty as is clear from the medical certificate issued to him. In reply thereto the stand taken by

the appellants is that the record of the respondent does not disclose that he had proceeded on leave on medical advice for an eye ailment at any time. Even in the present leave application submitted by him he had stated that he was proceeding on leave to attend some urgent work at Chandigarh while the medical certificate produced before the court shows that the same had been issued by a doctor at Amritsar. There is dispute as to when he made available this material. The stand of the appellants is that this material was also produced only after the order of termination had been made and in seeking a review of the said order. The respondent claimed that he had sent several communications regarding his illness or to extend his leave or to rejoin duty but there does not appear to be any record with the bank nor the respondent is in a position to produce any proof of his having sent such letters. We do not also find any material on record to show that he had reported for duty within the period indicated in the notice issued in terms of clause XVI of IV Bipartite Settlement. In the circumstances, we find the High Court had proceeded on an erroneous basis of non-compliance with the principles of natural justice, whereas the true content of the principles of natural justice should have been borne in mind, particularly when there was an agreement between the parties as to the manner in which the situation should be dealt with and the consequence that would ensue thereof."

b) Syndicate Bank Versus General Secretary, Syndicate Bank Staff Association & Anr. reported in **(2000) 5SCC 65**. The relevant paragraph nos. 17, 18 and 19 are reproduced herein below.

"17. Bank has followed the requirements of Clause 16 of the Bipartite Settlement. It rightly held that Dayananda has voluntarily retired from the service of the Bank. Under these circumstances it was not necessary for the Bank to hold any inquiry before passing the order. An inquiry would have been necessary if Dayananda had submitted his explanation which was not acceptable to the Bank or contended that he did report for duty but was not allowed to join by the Bank. Nothing of the like has happened here. Assuming for a moment that inquiry was necessitated, evidence led before the Tribunal clearly showed that notice was given to Dayananda and it is he who defaulted offered no explanation of his absence from duty and did not report for duty within 30 days of the notice as required in Clause 16 of the Bipartite Settlement.

18. This undue reliance on the principles of natural justice by the Tribunal and even by the High Court has certainly led to miscarriage of justice as far as Bank is concerned. Conduct of Dayananda as an employee of the Bank has been astounding. It was not a case where the Tribunal should have given any relief to Dayananda and yet the

Bank was directed to reinstate him with continuity of service and mercifully the latter part of the relief High Court struck down. There was no occasion for the Tribunal to direct that Dayananda be reinstated in service or for the High Court not to have exercised its jurisdiction under Article 226 of the Constitution to set aside the Award.

19. We, therefore, allow the appeal, set aside the impugned judgment of the High Court and also the Award dated September 26, 1994 of the Central Government Industrial Tribunal."

c) Vivekanand Sethi Vs-Chairman, J&K Bank Ltd & Ors,
reported in **(2005) 5 SCC 337**

d) Assistant General Manager, SBI -Vs- Sri E. Manohan, Case No. being **W.P. No. 1523/2021 (L-Ter)** of the Hon'ble High Court of Karnataka at Bengaluru.

14. So far as the respondent 2 is concerned, Mr. Mozhui, learned standing counsel for the respondent No.2 submitted that he has no role in this case. Accordingly, and as agreed upon, the name of the respondent No.2 was struck off from the title appeal.

15. Learned counsel for the respondent, while supporting the impugned judgment, submitted that the respondent/petitioner was appointed to the clerical cadre of the State Bank of India (SBI), Mokokchung Branch, on dated 09.01.1991, and his service was confirmed on dated 11.11.1991. He diligently served the bank until he began experiencing blurring vision in both eyes. He approached the Bank's Medical Officer at the Regional Office, SBI, Dimapur, on 14.03.2007, who referred him to an eye specialist in Guwahati. After a consultation with the Bank's Doctor in Guwahati, he was advised to see an eye specialist at Nemcare Hospital, Guwahati. The petitioner was admitted to Nemcare Hospital from 28.03.2007 to

31.03.2007 where he received conservative treatment and was told to return for further treatment after three months. However, lacking the means for further treatment, he sought a referral from Medical Superintendent at Naga Hospital, Kohima, but could not proceed with additional medical treatment.

16. Meanwhile, the respondent/petitioner received a Communication dated 11.07.2009 from the Bank, stating that he was deemed to have voluntarily retired on 10.10.2006, the date from which he was found absent. Aggrieved, the petitioner submitted a Representation to the Regional Manager through the Branch Manager, SBI, Mokokchung Branch, on 10.11.2004, requesting the benefit of Invalid Pension on medical grounds. However, despite of making of the application, the petitioner was not given any such benefit.

17. The learned counsel for the respondent submitted that financial difficulties, coupled with his ill health, prevented the respondent from seeking medical treatment or contacting authorities. He therefore approached this Court with the prayer for a direction to the respondent authorities to consider granting Invalid Pension under the CCS Pension Rules, 1972, or any applicable law. This Court considered and directed the authorities to consider for grant of Invalid Pension as may be permissible under the Rules. The authorities were also directed to constitute a Medical Board to examine the medical condition of the petitioner in terms of Clause 2.6 (g) of the Manual.

18. We have considered the submissions from both parties and

perused the available records.

19. It appears that due to continuous unauthorized absence, the appellant Bank issued three Notices *vide* Memorandums dated 03.11.2006, 04.12.2006 and 05.01.2007 in terms of the 8th Bipartite Settlement and Bank's Circular No. CDO/PNHRD/IR/26 dated 21.07.2005. These notices required him to report for duty within 30 (thirty) days and provided an opportunity for him to explain his absence. However, the writ petitioner/respondent did not respond to any of the Notices and remained absent without authorization.

20. Since the writ petitioner/respondent failed to report for duty despite receiving the three Notices within the specified timeframe and remained absent without prior authorization. Consequently, his name was removed from the Bank's rolls, deeming that he had no intent to work for the Bank leading to voluntary cessation employment effective from 10.10.2006. The petitioner Bank issued this order by invoking clause 33 of the 8th Bipartite Settlement dated 02.06.2005 which states:

“33. Voluntary Cessation of Employment

(i) When an employee absents himself from work for a period of 90 or more consecutive days without prior sanction for the Competent Authority or beyond the period of leave sanctioned originally including any extension thereof or when there is satisfactory evidence that he has taken up employment in India or outside, the management at any time thereafter may give a notice to the employee at his last known address as recorded with the Bank calling upon him to report for work within 30 days of the date of notice.

Unless the employee reports for work within 30 days of the notice or gives an explanation for his absence within the period of 30 days satisfying the management inter alia that he has not taken up another employment or avocation, the employee shall be given a further notice to report for work within 30 days of

the notice failing which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post.

In the event of the employee submitting a satisfactory reply, he shall be permitted to report for work thereafter within 30 days from the date of expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules/conditions of service.

If the employee fails to report for work within these 30 days period, then he shall be given a final notice to report for work within 30 days of this notice failing which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post.

(ii) If an employee again absents himself for the second time within a period of 30 days without submitting any application and obtaining sanction thereof, after reporting for duty in response to the first notice given after 90 days of absence or within the 30 days period granted to him for reporting to work on his submitting a satisfactory reply to the first notice, a further notice shall be given after 30 days of such absence giving him 30 days' time to report. If he fails to report for work or reports for work in response to the notice but absents himself a third time from work within a period of 30 days without prior sanction, his name shall be struck off from the rolls of the establishment after 30 days of such absence under intimation to him by registered post deeming that he has voluntarily vacated his appointment.

(iii) Any notice under this clause shall be in a language understood by the employee concerned. The notice shall be sent to him by registered post with acknowledgement due. Where the notice under this clause is sent to the employee by registered post acknowledgement due at the last recorded address communicated in writing by the employee and acknowledged by the bank, the same shall be deemed as good and proper service."

21. The learned counsel for the respondent contended that the appellant Bank should have conducted an enquiry before passing the order in Annexure VIII (of the writ petition). Conversely, the learned counsel for the appellant argued that since the respondent did not provide any explanation for his absence and failed to report for duty within 30 days of the notice as required under Clause - 33

of the Bipartite Settlement, there was no need for an Inquiry. If the respondent had submitted an explanation that the appellant Bank found unsatisfactory, then an Inquiry would have been warranted. In this regard, the Hon'ble Apex Court, in a similar case, in the case of Syndicate Bank, supra, held that it was not necessary for the Bank to hold any inquiry before passing the order. Relevant paragraph reads thus:

"18. The Bank has followed the requirements of Clause 16 of the Bipartite Settlement. It rightly held that Dayananda had voluntarily retired from the service of the Bank. Under these circumstances it was not necessary for the Bank to hold any inquiry before passing the order. An inquiry would have been necessary if Dayananda had submitted his explanation which was not acceptable to the Bank or contended that he did report for duty but was not allowed to join by the Bank. Nothing of the like has happened here. Assuming for a moment that inquiry was necessitated, evidence led before the Tribunal clearly showed that notice was given to Dayananda and it is he who defaulted and offered no explanation of his absence from duty and did not report for duty within 30 days the notice as required in Clause 16 of the Bipartite Settlement".

22. The learned counsel for the appellant submitted that the Hon'ble Apex court, in the case of Vivekananda Sethi, supra, considered a Clause 2 similar to that of clause 33 of the Bipartite Settlement and has held as follows:

"4. A bipartite settlement was entered into by and between the management of 58 Banks including the Appellant-Bank herein and their workmen; clause 2 whereof is as under:

"2. Voluntary Cessation of employment by the employees.-Whereas an employee has not submitted any application for leave and absents himself from work for a period of 90 or more consecutive days without or beyond any leave to his credit or absents himself for 90 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended and where there is satisfactory evidence that he has taken up employment in India and the management is satisfied that he has no present intention of joining duties, the management may at any time thereafter give a notice, to the employee's last known

address calling upon the employee to report for duty within 30 days of the notice stating, inter alia, the grounds for the management coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days or unless he gives an explanation for his absence satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the Bank's right to take any action under the law or rules of service."

"15. The bipartite settlement is clear and unambiguous. It should be given a literal meaning. A bare perusal of the said settlement would show that on receipt of a notice contemplated thereunder, the workman must either: (1) report for duties within thirty days; (2) give his explanation for his absence satisfying the management that he has not taken any employment or avocation; and (3) show that he has no intention of not joining the duties. It is, thus, only when the workman concerned does not join his duties within thirty days or fails to file a satisfactory explanation, as referred to hereinbefore, that the legal fiction shall come into force. In the instant case except for his absence satisfying the management that he has not taken up any other employment or avocation and that he had no intention of not joining his duties".

"16. In the aforementioned fact situation, we do not see any reason as to why the bank could not arrive at a satisfaction that the workman had no intention to join his duties..."

23. The appellant's contention is supported by the Hon'ble Supreme Court's decision cited by the learned counsel for the appellant. In this case, the respondent failed to provide any explanation for his absence and did not report for duty within 30 days of notices issued under Clause - 33 of the Bipartite settlement. Moreover, by admitting his absence and not responding to the three notices issued to him, it appears the respondent accepted the voluntary cessation of his service. Consequently, he applied for and was granted payment of his Gratuity and refunded his Provident Fund, which he was entitled to due to his voluntary cessation from

Bank's service.

24. The learned counsel for the appellant further noted that the impugned judgment by the learned single judge characterized the cessation of the respondent's service under Clause 2.6.(g) and 2.6.(h) of the HR Handbook of the State bank of India which states:

(g) if the employee is seeking voluntary retirement on health grounds before 55 years of age, he should be subjected to an examination by a Medical Board consisting of (a) a Civil Surgeon. (b) a specialist relevant to the disease/ailment, and (c) the Bank's Medical Officers at Local Head Office/Zonal Office. The Medical board should be asked to unequivocally state whether or not the employee is permanently incapacitated and hence unfit to continue in service. If the medical Board pronounces the employee to be permanently incapacitated, he should be retired from the date of medical report provided no disciplinary action is pending/contemplated against him.

(h) In such a case, the employee's request, bio data and medical report should be forwarded to the concerned authority expeditiously alongwith recommendations in the matter. The bio data of the employee should consist of his name, date of birth, age as on the date of retirement, date of appointment in the Bank and designation at the time of initial appointment, present designation, total pensionable service, reasons for seeking retirement, whether any disciplinary action is pending/ contemplated and Details of outstanding loans and advances and how the employee will liquidate them."

25. However, the learned counsel for the appellant argued that the case of the petitioner/respondent pertains to Voluntary Cessation of Employment under Clause 2.7 of the HR Handbook of State Bank of India and Clause 33 of the 8th Bipartite Settlement dated 02.06.2005 which states:

(i) When an employee absents himself from work for a period of 90 or more consecutive days without prior sanction for the Competent Authority or beyond the period of leave sanctioned originally including any extension thereof or when there is satisfactory evidence that he has taken up employment in India or outside, the management at any time thereafter may give a notice to the employee at his last known address as recorded with the Bank calling upon him to report for work within 30 days of the date of notice.

Unless the employee reports for work within 30 days of the notice or gives an explanation for his absence within the period of 30 days satisfying the management inter alia that he has not taken up another employment or avocation, the employee shall be given a further notice to report for work within 30 days of the notice failing which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post.

In the event of the employee submitting a satisfactory reply, he shall be permitted to report for work thereafter within 30 days from the date of expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules/conditions of service.

If the employee fails to report for work within these 30 days period, then he shall be given a final notice to report for work within 30 days of this notice failing which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post.

(ii) If an employee again absents himself for the second time within a period of 30 days without submitting any application and obtaining sanction thereof, after reporting for duty in response to the first notice given after 90 days of absence or within the 30 days period granted to him for reporting to work on his submitting a satisfactory reply to the first notice, a further notice shall be given after 30 days of such absence giving him 30 days' time to report. If he fails to report for work or reports for work in response to the notice but absents himself a third time from work within a period of 30 days without prior sanction, his name shall be struck off from the rolls of the establishment after 30 days of such absence under intimation to him by registered post deeming that he has voluntarily vacated his appointment.

(iii) Any notice under this clause shall be in a language understood by the employee concerned. The notice shall be sent to him by registered post with acknowledgement due. Where the notice under this clause is sent to the employee by registered post acknowledgement due at the last recorded address communicated in writing by the employee and acknowledged by the bank, the same shall be deemed as good and proper service."

26. The learned counsel for the appellant further submitted that the Bank's decision regarding Voluntary cessation of employment was never challenged by the petitioner/respondent before Bank

authorities or any court. The writ petitioner/respondent admitted to his voluntary cessation of employment and applied for Provident Fund amount payment on 12.10.2011 and for Gratuity on 29.03.2012. Consequently, amount of Rs. 2,60,394/- for the Provident Fund and Rs. 63,779/- for Gratuity were sanctioned and paid to the respondent after the recovery of the Bank's due. Thus, the respondent's voluntary cessation of employment has been final since 10.10.2006.

27. Additionally, the learned counsel for the appellant noted that the only prayer in the writ petition filed by the petitioner/respondent was for Invalid Pension under Rule 38 of the Central Civil Services (Pension) Rule, 1972, or for direction to grant pension and gratuity and pay all dues. However, as a Bank employee, the petitioner/respondent is governed by the **State Bank of India, Employee's Pension Fund Rules, 1955**, making the CCS (Pension) Rule inapplicable. It is asserted that the petitioner/respondent is entitled under rule 22 (i) of the State Bank of India, Employee's Pension Fund Rules, 1955, which states:

22.(i) A member shall be entitled to a pension under these Rules on retiring from the Bank's service-

(a) After having completed twenty years pensionable service provided that he has attained the age of fifty years or if he is in the services of the Bank on or after 01/11/1993, after having completed ten years pensionable service provided that he has attained the age of fifty-eight years or if he is in the service of the Bank on or after 22.05.1998, after having completed ten years pensionable service provided that he has attained the age of sixty years;

(b) After having completed twenty years pensionable service, irrespective of the age he shall have attained, if he shall satisfy the authority competent to sanction his retirement by approved medical certificate or otherwise that he is incapacitated for further active service.

28. In the instant case, the petitioner/respondent joined the service of SBI in the clerical grade on 18.03.1991. His voluntary cessation of service due to continuous unauthorized absence from duty took effect on 10.10.2006. Thus, the total period of service from 18.03.1991 to 10.10.2006 is 15 years, 6 months and 22 days. The petitioner/respondent was suspended from 25.04.1998 to 31.05.2002 amounting to 1498 days which was not considered as on duty. Additionally, he had 124 days of unauthorized absence. Therefore, the net service period is 11 years, 1 month and 14 days after deducting the suspension and absence period. This calculation of length of service has not been disputed by the respondent/petitioner.

29. Furthermore, it is noted that the petitioner has neither applied for retirement on medical grounds, nor completed 20 years of service. His case is one of voluntary Cessation of employment due to continuous unauthorized absence from 10.10.2006 to 10.07.2009, without submitting any application. Rule 2.6 (g) applies to individual who are still in active service; however, the petitioner has not been in active service since 10.10.2006. Therefore, he is not entitled to a medical examination for invalid pension, as he is no longer in Bank's active services.

30. Since the petitioner has not completed 20 years of pensionable service in the Bank, he is not eligible for pension or family pension according to Rule 22 of the SBI Employees Pension Rules. However, as requested by the petitioner, payments for Gratuity and a refund of the Provident Fund were sanctioned and paid after recovery of

Bank's dues. The refund of the Provident Fund balance was also approved and paid following the recovery of Bank's dues. This fact is not denied by the respondent.

31. In light of the above, and considering the facts and circumstances of the case, we find merit in the writ appeal. Therefore, for the reasons stated herein, we are of the opinion that the appeal filed by the Bank should be allowed. Accordingly, it is allowed, and the impugned Judgment & Order dated 27.03.2023 passed by the learned Single Judge is hereby set aside.

32. Having reached this conclusion, we find the authorities cited by the appellant are squarely applicable and have been relied upon. The relevant rules quoted in the case have also been considered. Thus, the writ appeal stands disposed of as allowed.

JUDGE

JUDGE

Comparing Assistant