

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE ARIJIT BANERJEE
&
THE HON'BLE JUSTICE BISWAROOP CHOWDHURY**

**MAT No. 106 OF 2024
ARISING OUT OF**

W.P.A. No. 379 of 2024

The Bank of Baroda & Ors.

-vs.-

Ankur Saha Union of India

For the Appellants/Bank

Mr. Dipanjan Dutta, Adv.

Mr. Deborshi Dhar, Adv.

For the Respondents no.1:

Mr. Aritra Bhattacharya, Adv.

Mr. Rhitam Chatterjee, Adv.

Last Heard On: - April 07, 2025

Judgment on: - July 07, 2025

Biswaroop Chowdhury, J:-

The Appellant before the Court is a respondent in a Writ Petition and is aggrieved by the Order dated 7th October 2024, passed in WPA-379 of 2024 by a Learned Single Judge of this Court.

The respondent no-1/writ petitioner filed Writ Petition being WPA. 379 of 2024 challenging the order of removal from service dated 19-11-2022,

including the memorandum, the articles of charge, the findings of the Inquiry Officer decision of the Disciplinary Authority and Appellate Authority.

The contention of the Writ Petitioner before the Learned Trial Judge was that the writ Petitioner joined the Bank of Baroda in the year 2011, in the MM.2 scale in Branch operations. After successfully completing tenure of around 10 years of uninterrupted continuous and without a break service he was transferred under Inter Zonal Transfer exercise from Kolkata Zone to Rajkot Zone, Gujrat on 05.09.2024 while being posted in the scale of SM4 in Branch operations in the Siliguri Branch to Savarkundla Branch, Rajkot as Branch Head/Chief Manager. Accordingly the petitioner joined his duty as the Branch Head at Savarkundla Branch that was at Rajkot Zone on 08.09.2021.

The petitioner was not charged or convicted for any moral turpitude or breach of trust for abuse of his employment position. The career and conduct of the petitioner so far had been clean and he discharged his official responsibility with complete honesty integration devotion and dedication.

It is further contended that the petitioner went on to proceed on sanctioned leave from 4th October 2021 to 16th October 2021. During the continuance of his sanctioned leave in an unfortunate turn of event, he accidentally fractured his left leg. The Writ Petitioner without delay informed the authorities by E-mail on 13th October 2021, about his leg fracture and his inability to join and resume duties upon the expiry of sanctioned leave till he recovered. He attached all relevant medical reports with the E-mail. The

respondent Authorities sent an E-mail on 20th October 2021 asking him to provide specific date of his reporting to duty. The petitioner by another Email on 21st October informed the authorities about his medical condition and probable date of joining as 15th November 2021.

It is contended that the petitioner suffered vomiting and was admitted to hospital on 10th November 2021 diagnosed with Viral Hepatitis. The petitioner informed the authorities on 12th November 2021 attached therewith all medical records. On 15th November 2021, the petitioner received E-mail for extension of leave on medical grounds without supporting documents which was not considered. On 21st November 2021 the petitioner again sent E-mail attaching all relevant medical records. Thereafter the petitioner on 1st December 2021 explained his medical condition about inability to join and that doctor has prescribed one month rest.

According to the letter of respondent authorities dated 15-11-2021 the said medical documents were insufficient and not acceptable without examining them. Similarly the writ petitioner received E-mail on 6th December 2021 informing that his leave would be treated as unauthorized, to which he replied by letter dated 9th December 2021 for reconsideration. The salary of the petitioner was stopped from 15-11-2021. On 15th January 2022, petitioner received Explanatory note from the respondent authorities, to which reply letter was submitted on 18th January 2022. The Writ petitioner was issued memorandum on 1-2-2022 containing the Articles of charge. The Writ

petitioner pursuant to the issuance of memorandum submitted his statement of defence denying the allegations. Pursuant to submission of defence inquiry officer was appointed, who conducted the inquiry, and submitted the inquiry report. The Respondent no-1/writ Petitioner challenged the inquiry report and charge framed in Writ petition WPA-No-2675 of 2022.

The Writ Petitioner during pendency of the writ application was issued order of removal from service and the Writ Petition WPA-No-2675 of 2022 was disposed by granting the petitioner liberty to prefer appeal against order of removal from service. The Petitioner pursuant to such liberty preferred appeal, on 29-12-2022. The Appellate Authority by Order dated 3-05-2023 disposed the Appeal by rejecting the prayer of the writ petitioner. The writ petitioner thereafter preferred an application for review which was also dismissed. The writ petitioner/respondent no-1 being aggrieved moved a writ application before this Court being WPA-No-379 of 2024. The said writ petition was contested by filing Affidavit in opposition and Affidavit in reply.

By Order dated 07-10-2024 a Learned Single Judge of this Court was pleased to dispose of the Writ Application being WPA-379 of 2024 by observing and directing as follows:

“10. The next instance of bias, as canvassed by the petitioner, is the finding of the Appellate Authority that the appellant had never requested or informed the IA about his non-availability on 05.05.2022 and never requested for rescheduling the inquiry. The petitioner relied on emails to show that he

had informed the authorities well in advance about the inability to attend the hearing on 05.05.2022, on numerous occasions.

11. It is indeed surprising that in a single disciplinary proceeding, there could be so many irregularities, instances of breach of principles of natural justice and so many errors on the face of the record that would have a direct bearing on the question of whether the petitioner could be punished for the unauthorized absence or not.

12. The petitioner's further case is that the reviewing authority differed with the Appellant Authority on the point whether the petitioner was advised by the Zonal or Regional Authorities to act as per the empanelled doctor's opinion and present himself for medical examination at Murshidabad or at Rajkot.

13. The orders passed by the respondent authorities are not only replete with perverse findings and absence of adherence to principles of natural justice, to say the least, but are also quite insensitive and exceedingly harsh. One wonders as to how the respondent authorities could be so unempathetic about serious afflictions of its employee like fracture of leg and suffering from Hepatitis. Instead of extending a helping hand, it appears that from the very beginning, the respondent authorities had acted with a pre-conceived mind to somehow punish the petitioner and get rid of him. Whether this was because of the litigations initiated by the petitioner or not is anybody's guess.

14. However, it is amply clear from the materials available that the petitioner was given a raw deal by the respondent authorities, which is not sustainable in law, not only because of the violations of principles of natural justice committed by them at different stages, but also because of the number of perverse findings made by different authorities over diverse issues like informing from beforehand about the inability to attend inquiry or the findings in the blood report.

15. The sentence imposed too, of removal from service, was arbitrary and exceedingly harsh, especially considering the fact that the prolonged absence of the petitioner was due to reasons beyond his control. Fracture of a leg is no mean thing. Nor is his suffering from Hepatitis a simple issue. This is besides the fact that there were glaring examples of violations of principles of justice and perverse finding of facts as discussed earlier.

16. It is also apparent from the circular relied upon that an employee could not resume duty unless he is permitted to do so by concerned authorities. So, it is abundantly clear that if the petitioner's absence was declared by the respondent authorities to be unauthorized, he could not have on his own and without permission of such authorities joined back.

17. In view of the above discussions and in the interest of justice, the order of removal from service bearing reference No.- Rajkot: ZO: HRM: 04/807 dated 19.11.2022 including the memorandum, the Articles of Charges contained therein, the findings of the inquiry authority and the order of the

Executive Director and Appellate Authority dated 03.05.2023 and all subsequent proceeding in connection with the purported disciplinary proceeding are quashed and set aside. The petitioner shall be allowed to resume service forthwith with full back wages.

18. With these observations, the writ petition is disposed of.”

Being aggrieved by the Order dated 07-10-2024 passed in the writ application WPA-379 of 2024, the Appellant has come up with the instant appeal. Heard Learned Advocate for the Appellant and Learned Advocate for the respondent no-1. Perused the materials on record.

Learned Advocate for the Appellant submits that the Learned Judge erred in law and in fact in holding that the penalty imposed by Disciplinary Authority as provided under the regulations was biased unreasoned and passed without following due process.

Learned Advocate further submits that the Hon'ble Trial Judge held that out of the charges the charge of 'unauthorized absence' was a specific one but even during Disciplinary proceedings no cogent reasons could be established by the petitioner barring few unsubstantiated medical documents that too some of them were normal routine illness and as such he has on one pretext as the other remained absent by merely changing the pretext of illness. The respondent/writ petitioner failed to submit any document which corroborate actual illness accompanied by supporting documents and documents submitted as such by him were only submission of Medical prescriptions and

not accompanied by the Medical Certificates; but the Hon'ble Judge without considering those went on to quash the articles of charges as a whole. Learned Advocate also submits that the Learned Single Judge found that the penalty was disproportionate to the charges but no infirmity has been pointed out.

It is submitted by the Learned Advocate that the writ petitioner failed to demonstrate any violation of natural justice but the Learned Judge proceeded with a pre-conceived notion that there has been fault on the part of the Appellant Bank. Learned Advocate further submits that though the Appellant had provided ample opportunities to the Writ Petitioner, to defend his cause, the Hon'ble Judge went on to quash the entire disciplinary proceedings memorandum and articles of charges and even the findings of the disciplinary, review and appellate authorities as a whole on the ground of violation of natural justice and procedural lapse as nowhere the Learned Judge accorded logical view of such findings.

It is also submitted that the observations of the Hon'ble Trial Judge tending to highlight bias, irregularities as errors, are all based on wrong appreciation of facts and conjure and surmises.

Learned Advocate relies upon the following judicial decisions.

State of Punjab VS Dr BL Single.

Reported in AIR 2009. S.C. P-1149.

The Tamil Nadu Agricultural University and Anr. VS R. Agila. SLP © 13070-13075/2022.

Learned Advocate for the writ Petitioner/respondent no-1 submits that the absence of writ petitioner/respondent no-1 was not willful and/or deliberate. There have been unavoidable and compelling circumstances regarding the absence of the writ Petitioner and the ailments of the writ Petitioner/respondent were not in the nature of any temporary indisposition.

Learned Advocate further submits that the writ petitioner/respondent no-1 at the relevant time-period as well as at different points of material times had addressed several and umpteen numbers of letters representations to the authorities attached therewith all relevant medical documents praying for grant of suit-leave upon due authorization. Learned Advocate also submits that it is the fault and/or the omissions on the part of the authorities that they have failed to properly examine the medical documents and supporting documents supplied to them by the writ petitioner/respondent no-1 at different point of time in support of his prayer for grant of sick leave.

Learned Advocate relies upon the 'MASTER CIRCULAR ON LEAVE, SPECIAL LEAVE, LEAVE FOR GOING ABROAD AND UNAUTHORIZED ABSENCE' issued by the Bank. Vide Ref : BCC:BR:96 284 dated 05.08.2004 which provides as follows:

'No employee on unauthorized absence shall be permitted to resume duty unless he/she submits in writing to his reporting authority. (Branch

Head/Regional Head/ Zonal Head as the case may be) the reasons/causes of his/her unauthorized absence and permission thereof is granted in writing by the reporting authority. For the purpose the reporting authority may seek the permission of the competent Authority if needed. For employers at Central Office, Head Office and other administrative offices the respective functional head at these offices shall be the Competent Authority’.

Learned Advocate submits that in accordance with the Master Circular the writ Petitioner could not join the Bank unless and until his absence was condoned and permission was granted by the Appellants Authority.

Learned Advocate further relies upon the MASTER CIRCULAR ON LEAVE, SPECIAL LEAVE, LEAVE FOR GOING ABROAD AND UNAUTHORIZED ABSENCE. The said circular provides as follows:

“Suit leave will be sanctioned on production of medical certificate If the medical certificate produced by the Employee is not acceptable to the Bank for some reason, the Bank may direct the Employee to appear for medical check up by a medical practioner of the Bank’s choice and to produce medical certificate issued by him. An Employee may be sanctioned sick leave if the medical certificate is given by a practitioner of medicine other than allopathic provided he is a registered medical practitioner (but this should be to the satisfaction of the Bank).”

Learned Advocate submits that in terms of the Master Circular certain Annexures namely Annexure-2A, Annexure-2B, Annexure-2C, Annexure-2D

containing draft letter formats have been provided in the said Master Circular inter-alia for causing appearance of the staff member and/or employee especially who remains absent on medical grounds to get himself examined or/or checked up before the Bank's Doctor. In this regard such letter and/or communication was never issued duly to the writ petitioner/respondent no-1 by the concerned authority at any point in relevant material time-period. Learned Advocate further submits that while the appellants/applicants herein have mentioned about the said discharge certificate dated 11.11.2021, they have conveniently overlooked and/or deliberately ignored that the E-mail dated 12.11.2021 addressed by the wife of the writ petitioner/respondent herein to the concerned authorities not only contained attachments in respect of the said discharge certificate dated 11.11.2021 but also contained certain other relevant medical reports medical documents, medical prescriptions, supporting documents, medical certificates, medical prescriptions and/or diagnostic reports etc. including the medical prescriptions of the doctor dated 12.11.2021 advising the respondent no-1 one month complete bed rest or till recovery. It is further submitted that discharge certificate issued by the hospital does not ipso facto substantiate or certify fitness of the concerned patient. Learned Advocate submits that throughout the Disciplinary Proceeding the writ petitioner/respondent was deprived of Principles of natural justice. The charge was framed prior to the opinion of empanelled Doctor, thus it is bad in law. There have been compelling circumstances and/or unavoidable circumstances in the case of the writ petitioner/respondent no-1 which ought not to be

overlooked. Learned Advocate further submits that the writ petitioner/respondent no-1 with regard to the date of hearing fixed on 18/04/2022, 26-04-2022, and 05.05-2022 intimated the authority about his genuine inability to attend the said hearings and with regard to assistance by any other employee the Writ Petitioner/Respondent no-1 was unable to find any other office employee in this regard. It is submitted that major penalty proceeding is completely disproportional.

The following decisions are relied upon by Learned Advocate for the Writ Petitioner/Respondent no-1.

Krishnakant B. Parmar VS Union of India.

Reported in 2012(3) SCC. 178.

Union of India and others V Subrata Nath Reported in (2022) 18 SCR 605.

United Bank of India V Biswanath Bhattacharyee –Reported in [2022] 3 SCR-988.

State of Jharkhand and Ors. VS Brahmaputra Mettlies Ltd.

Reported in [2020] 14 SCR-P-45.

M/S. Motilal Padmaput Sugar Mills Co. (p) Ltd V State of Uttar Pradesh and ors.

[1969] @SCR-641.

Just Rights for children Alliance and Anr V. S. Harish and ors.

Reported [2024] 10 SCR. 154.

Deepali Gundu Surwase. V Kranti Junior Adhyapait Mahavidyalaya.
Reported in [2013] 9 SCR-1.

Chatrapal VS State of Uttar Pradesh and Anr 2024 INSC-115.

Maharashtra State road Transport Corporation V Mahadeo Krishna Naik.
2025 INSC-218.

Before proceeding to decide the matter in issue it is necessary to consider and discuss the grounds for which Disciplinary proceedings was instituted against the respondent no-1 and whether the respondent authorities were justified in instituting such proceedings.

It is an admitted position that the respondent/writ petitioner obtained leave for the period 04-10-2021 till 16-10-2021 to proceed to his hometown. The writ petitioner was required to report for duty on 18-10-2021, but he could not report for the duty as he suffered fracture on his left leg. The emergency ticket of Islampur Rural Hospital reflects that writ Petitioner suffered foot injury and was advised bed rest and review after 27 days. As the Writ Petitioner by letter dated October 13,2021 informed that he will not be able to join till recovery the HRM Department Bhavnagar Region by Letter dated October 20, 2021 enquired as to the specific date when petitioner will join. The writ petitioner by Letter dated October 21, 2021 informed that he will probably be

able to report for duty latest by 15th November 2021. The Respondent Authorities accepted the letter of the writ petitioner as he mentioned a date.

The dispute cropped up when wife of the Writ Petitioner on 12th November 2021 informed that the writ petitioner was admitted to hospital on 10th November 2021 after he complained of stomach pain and vomiting since 9th November 2021 night, attaching Discharge Certificate dated 11th November 2021, Certificate of Doctor dated 12th November 2021, Prescriptions and blood report, with a prayer for extension of one month leave. The Writ petitioner/respondent no-1 by letter dated 15-11-2021 was directed to submit all medical/hospitalization related documents. It was clarified that without hospitalization documents the extension of leave will be considered as unauthorized absence. The writ Petitioner upon obtaining the letter once again on 21st November 2021 prayed for sick Leave till recovery annexing copy of the Discharge Certificate Medical Certificate, prescriptions and USG. Report. By Letter dated 01/12/2021 the writ petitioner was informed by the respondent authorities that his absence from 15-11-2021 will be treated as unauthorized absence and the writ petitioner was asked to submit explanation for remaining absent unauthorized. It was further clarified that in the event the Writ Petitioner/respondent no-1 does not report for duty immediately the Bank Authorities will initiate appropriate action as per rules. The Writ Petitioner upon receipt of the said notice on the same date requested the Bank Authority not to treat the absence of the Petitioner as unauthorized and further informed that he will join as soon as he recovers and as and when the doctor advises

him to do so. The writ petitioner was again informed by letter dated 23-12-2021 that his absence from duties with effect from 15-11-2021 is treated to be unauthorized. It was further stated that the authority is not satisfied with the medical documents and the reasons submitted by the writ petitioner. The petitioner was once again advised to report for duty immediately. The writ petitioner upon receipt of letter dated 23rd December 2021 submitted Blood reports dated 12th October 2021, 11th November 2021 and 14th December 2021. The Petitioner also submitted USG report dated 16th October 2021.

On 15-01-2022 explanation was sought for from the writ petitioner mentioning 8 irregularities and acts alleged to be committed by him. The writ petitioner was advised to submit his rationale for committing the said acts. The writ petitioner upon receipt of the notice submitted his reply.

Now for the purpose of dealing with the issue 2 irregularities namely serial no-7 and 8 alleged by the Bank Authorities in their letter dated 15-01-2002 and reply submitted by the writ petitioner are produced hereinbelow.

‘7 Due to your continuous unauthorized absence, Bank is not able to utilize your services for which you have been appointed and Bank’s services and customer service is affected adversely.

‘8 By the aforesaid Acts of Unauthorized Absence without Prior sanction of Leave not reporting for duties and disregarding instructions of the superiors you have committed Acts which are subversive to Discipline lack of devotion

and diligence and have shown disobedience to the instructions of higher authorities.

The reply submitted by the writ petitioner is quoted as follows:

I am in receipt of your letter dated 15th January 2022 with reference No :Rajkot; ZO; HRM:04/29. Subject Explanatory Note, Sir I beg to state that I am still under medical supervision and the Doctor is yet to declare me fit enough to join duty.

Sir the situation is such that family consists of my child 4 years my Father 77 years Old and my Wife and myself. In such a situation if at all something, serious happens to me my family will be in great distress and nobody to help.

Sir the intention was never to defy instruction of my esteemed higher authorities but at the same time I fear serious health issues for myself by not following the instruction of the doctor. Sir I have already had a history of Fatty Liver and a rare condition of Urinary bladder wall thickened which lead to a rare condition of Urinary bladder diverticulum and was operated in 2013.'

I once again request you to please consider my case with compassion and authorize my leaves on medical grounds. LOP has made it very very tough for me during this tough situation and also will probably affect the repayment of three of my Loan Accounts. Please help me with your kind consideration.'

Thus upon considering the representations made by the Writ Petitioner to the Bank Authorities it will appear that the petitioner was absent from duty from 18th October 2021. Although the Writ Petitioner submitted medical certificates and letter to join on 15-11-2021, which was accepted by the Bank Authority but beyond the said date the reply and the medical documents submitted thereafter was not convincing to the Bank Authority. However even if the Medical Certificate issued on 12-11-2021 prescribed rest for one month that would apply till 12-12-2021. The Writ Petitioner could not submit any medical certificate that he was advised rest beyond 12-12-2021. Till 15-01-2022, the writ petitioner could not furnish any certificate from which it can be presumed that he was advised rest and cannot join duty after 12-12-2021.

Although the petitioner stated that he will join as and when he recovers and as and when the doctor advises him to join but the contention is ambiguous. A person who is suffering from ailments can know as to whether he is fit and whether he can join duty only when he visits a doctor gets himself examined and either gets fit certificate to join or a certificate to take further rest for a particular period, with an advice to report for further check up on a future date. The records will not show any such steps is taken by the Petitioner, beyond 12/12/2021.

A person may suffer from some ailments for which treatment for a long period is required but mere treatment for some diseases and prescriptions of medicines do not prove that the person has to take rest and cannot join work,

unless there are medical certificates advising rest. The writ petitioner being in the responsible post of chief Manager of a Bank ought to have taken specific advice of Doctor and submitted necessary certificate, to the authority from which the authority would have been convinced as to whether the petitioner was fit or petitioner was still sick or require rest. An employee of Group 'C' or Group 'D' may take rest due to illness for a long period without specific medical certificate and a sympathetic view may be taken by the Employer. But in case of Chief Manager of a Bank holding responsible position more sincere vigilant steps are required to be taken in case of illness by submitting specific medical certificates. It is quite natural for a person to be conscious about his health, which is his basic right but it is also necessary for a person holding responsible post to be conscious about his duty in office.

Now it is necessary to discuss Annexure – 3 of the 'MASTER CIRCULAR' which deals with unauthorized Absence of Officers-Award Staff.

The provisions of the circular are as follows:

- '1. Leave is not a matter of right of any employee. Unless sanctioned by the competent Authority, no leave is permissible to any employee. No leave is to be sanctioned unless the employee submits necessary application and leave is available to the employees' credit.
2. Whenever any staff member remains absent without any intimation he should be marked 'Unauthorized Absent' in the

Attendance Register. A letter should be sent to him at his last known address informing him that he is being treated as unauthorizedly absent and he should report for duty immediately.

3. Even after sending such letter if the Employee continues to remain absent modified letters (as given at Annexure-3-B) should be sent to him.
4. In the meanwhile, if the Employee sends any reply that he is not coming to the Branch because of sickness and/or sends medical certificate and the leave sanctioning authority is not satisfied with such reason and/or certificate, the Employee may be directed to undergo medical examination by the Bank's doctor or a doctor authorized by the Bank.
5. If the employee sends any reason other than sickness and if leave sanctioning authority is not satisfied with such reason the Branch Manager should send him a letter asking him to report for duty immediately and also advise that he is being treated on 'unauthorized absence' and he is also liable for further disciplinary action.
6. In case the letters sent at his last known address are returned undelivered then such envelopes (without opening the same) should be kept on the record so as to keep a record that the bank had sent him communication but the same was returned for one reason or the other.

7. In spite of return of such letters the Branch should send him another similar letter after the interval of one week.
8. All such letters should be sent by Regd. A. D. as well as under certificate of posting and also by ordinary post and the records of dispatching of such letters should be preserved carefully.
9. In all cases where the Employee continues to remain absent unauthorized the cases should be referred to Regional Office with full details with a request to initiate disciplinary proceedings.
10. No employee on unauthorized absence shall be permitted to resume duty unless he/she submits in writing to his reporting authority (Branch Head/Regional Head/ Zonal Head as the case may be) the reasons/causes of his/her unauthorized absence, and permission thereof is granted in writing by the reporting authority. For the purpose, the reporting authority may seek the permission of the competent Authority if needed. For employees at Central Office, Head Office and other administrative offices, the respective functional head at these offices shall be the competent Authority.'

Upon considering the conditions laid down under the MASTER CIRCULAR regarding Leave and Unauthorized absence and the submission of Learned Advocate for the writ Petitioner/respondent that the petitioner could not join the Bank unless permission was granted by the respondent authority this Court is of the view that this argument is not applicable on the ground

that the Bank Authorities by Letters dates 01/12/2021 and 23/12/2021 requested the writ petitioner to join although the absence of the Writ Petitioner was alleged to be unauthorized, thus the letters were sufficient to enable the writ petitioner to join. Moreover it is not the case of the Writ Petitioner that prior to institution of disciplinary proceedings he expressed his willingness to join office and was refused permission.

With regard to the submission of the Learned Advocate for the writ Petitioner/respondent no-1 that in terms of Master Circular if the medical certificate produced by an employee is not acceptable to Bank the Bank may direct the Employee to appear for medical checkup, this Court is of the view that although that is a general procedure but in this matter deviation was made as the Bank Authority relied on the first certificate issued on 12/10/2021 by Department of Health and Family Welfare Islampur Rural Hospital Murshidabad regarding fracture and bed rest which was advised for 27 days. On 8/11/2025 certificate was issued that patient is fit for normal work. It is only when the writ petitioner sought extension of leave on the ground of suffering due to hepatitis the Bank by Letter dated 15-11-2021 requested the writ petitioner to submit all the medical/hospitalization documents for the matter to be re-examined. On that date there was no request to resume duty. Thus the Bank instead of directing the petitioner to appear before the Bank's empanelled doctor granted opportunity to the writ petitioner to submit relevant documents, which the writ petitioner submitted on 21/11/2021. Hence it was incumbent upon the writ petitioner to obtain

specific medical certificate about his illness and bed rest or in the alternative join duty as requested by the Bank Authority and submit explanation about his absence. As the writ petitioner was under treatment for both leg fracture and Hepatitis absence of direction upon the writ petitioner to appear before the Bank's empanelled doctor is not fatal. In the instant matter although the Writ Petitioner submitted medical certificate of Medical Practitioner namely Dr. P.K. Adhikari where rest for one month but the said period was till 12-12-2021. Without getting the certificate renewed for further rest it is not open to the Writ Petitioner to claim further rest. A person may undergo treatment for a long period but it does not indicate that he cannot work unless it is specified in the medical certificate prescribing rest. Moreover the nature of service to be rendered by the writ petitioner is not of risks and hazards or involves manual work in factory but it is discharging of managerial function in office which the writ petitioner being in the post of Chief Manager cannot avoid unless specifically provided in the medical certificate.

No medical certificate is produced which will go to show that writ petitioner was advised continuous rest till 01-02-2022, the date when Disciplinary Proceedings was initiated against the petitioner. thus it was incumbent upon the writ petitioner to join duty after 12-12-2021, more specifically after issuance of letter dated 23-12-2021 where the writ petitioner was requested to join duty. As the writ petitioner did not join duty till 31/01/2022 disciplinary proceedings was instituted. As the Writ petitioner produced Medical Certificate where he was advised rest till 12-12-2021 and not

continuous rest this Court does not find any illegality in the act of the Bank Authorities in instituting Disciplinary Proceedings against the Writ Petitioner.

Now with regard to the argument of the Learned Advocate for the Writ Petitioner that the Writ Petitioner was not granted opportunity of hearing in the Disciplinary Proceedings it will appear that opportunities were given to the writ petitioner to appear but the writ petitioner did not appear neither did he send any defence assistant. The Writ Petitioner also did not seek time from Disciplinary Authority to appoint defence assistant. As the Inquiry proceedings involved arriving at a decision relying on the documents on record, and did not involve findings of fact a defence assistant could have been engaged with relevant documents and instructions and with written notes of submissions. Thus at this stage the plea of non-appearance before Disciplinary Authority cannot be sustained.

It is well settled that even if charge sheeted employee does not appear before Inquiry Authority, the authority upon considering the Employer's witnesses the written statement of defence submitted by the employee and materials on record and upon applying mind to the facts of the case should arrive at a conclusion supported by cogent reasons.

Now the point for consideration is whether the Inquiry Officer applied his mind to the facts of the case.

Before proceeding to deal with the findings of the Inquiry Officer it is necessary to deal with the Article of Charges framed against the writ petitioner and the reply of the writ petitioner to those charges.

The following charges were framed against the writ petitioner.

- ‘1. He is continuously remaining on unauthorized absence w.e.f 15.11.2021 without prior permission/sanction of leave by the competent authority and has not reported to duties disregarding reported instructions of Higher Authorities.
2. He adopted such steps and took such actions as were derogatory, prejudicial, and detrimental or injurious to the interest of the Bank.
3. He violated the Bank’s rules and established procedures.
4. He has committed acts which are grossly subversive of discipline.

The Writ petitioner in his defence denied the allegations made in the articles of charges. The main contention of the writ petitioner is quoted as follows:

‘I humbly deny the charges of remaining on unauthorized leave since 15th of November 2021 and that have been disregarding repeated instructions of my higher authorities. I have been suffering from health issues and have been informing my regional authority to authorize my leave on medical ground.”

The Bank Authority relied upon the following documents at the time of Enquiry:

- a) Letter dated 15-11-2021 issued to the Writ Petitioner.
- b) Letter dated 1.12.2021 issued to the Writ Petitioner.
- c) Letter dated 6-12-2021 issued to the writ petitioner.
- d) Letter dated 23-12-2021 issued to the Writ Petitioner.
- e) Explanatory note dated 15-01-2022 issued to the Writ Petitioner.

It will appear from the findings of the Inquiry Officer that the Inquiry Officer included in his report the contention and allegation of Department/Employer, arguments by presenting Officer written Statement of the Writ Petitioner/Respondent no-1 and his own findings.

Upon perusal of the findings of the Inquiry Officer it will appear that although the Inquiry Officer dealt with the documents of the Bank, but did not enquire about documents submitted by Employee.

The Inquiry Officer being a fact finding authority has a duty to call for relevant documents from the department to arrive at a finding. The Inquiry Officer in this case did not call for the letters and representations along with medical documents submitted by the Writ Petitioner. Thus there are serious irregularities in conducting the proceeding. It will further appear that the findings of the Inquiry Officer is based on the documents furnished by the Department on the ground that leave of the Employee from 15-11-2021 is

unauthorized since medical documents submitted by is insufficient and not found acceptable by management. The findings is quoted hereinbelow:

‘From Managements Exhibits (MEXs) and hearing it is observed that CSO was sanctioned leave from 04-10-2021 to 16.10.2021. CSO) continue to remain on leave from 18-10-2021 due to reported leg fracture. He failed to report on 15-11-2021 vide e-mail dated 21-10-2021.

Leave of CSO from 15-11-2021 is unauthorized since medical documents submitted by insufficient and not found acceptable by management.’

Thus the findings of Inquiry Officer will go to show that the said Officer relied upon the documents and findings of the management, without arriving at independent findings.

It is well settled that absence without leave is unauthorized absence but such absence does not amount to misconduct if the same is due to unavoidable circumstance and not willful in nature.

In this regard it is necessary to consider the decision of the Hon’ble Supreme Court of India in the case of State of Punjab VS Dr. P.L. Singla reported in AIR-2009 S.C. P-1149.

In the case of State of Punjab VS Dr. P.L. Singla the Hon’ble Supreme Court observed as follows:

‘8. Unauthorized absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are

open to the employer. The first is to condone the unauthorized absence by accepting the explanation and sanctioning leave for the period of the unauthorized absence in which event the misconduct stood condoned. The second is to treat the unauthorized absence as a misconduct, hold an enquiry and impose a punishment for the misconduct.

9. An employee who remains unauthorisedly absent for some period (or who overstay the period of leave), on reporting back to duty, may apply for condonation of the absence by offering an explanation for such unauthorized absence and seek grant of leave for that period. If the employer is satisfied that there was sufficient cause or justification for the unauthorized absence (or the overstay after expiry of leave), the employer may condone the act of indiscipline and sanction leave post facto. If leave is so sanctioned and the unauthorized absence is condoned, it will not be open to the employer to thereafter initiate disciplinary proceedings in regard to the said misconduct unless it had, while sanctioning leave, reserved the right to take disciplinary action in regard to the act of indiscipline. We may note here that a request for condoning the absence may be favorably considered where the unauthorized absence is of a few days or a few months and the reason for absence is stated to be the sudden, serious illness or unexpected bereavement in the family. But long unauthorized absences are not usually condoned. In fact in security services where discipline is of utmost importance, even a few of days overstay is viewed very seriously. Be that as it may.'

In this case the Inquiry Authority before arriving at a finding that the writ petitioner was guilty of unauthorized absence ought to have ascertained as to whether writ petitioner's absence was willful. For this purpose the Inquiry Officer ought to have scrutinized the letters and medical documents submitted by the writ petitioner by calling for the same from the Department, and by not doing so the Inquiry Officer committed an error. In such a situation the usual procedure would have been to direct de-novo enquiry granting opportunity to the writ Petitioner to be present for hearing. But as the Enquiry involves examination of documents and not findings of fact on oral evidence we do not think reasonable to direct de-novo enquiry. Moreover if the Writ Petitioner is allowed to appear in the Enquiry he may not be able to produce any new document and improve his case other than the documents he has submitted before Bank Authority and have filed in writ proceedings. The documents submitted by the Writ Petitioner comprises two medical certificates namely certificate dated 12/10/2021 issued by Department of Health and Family Welfare Islampur Rural Hospital Murshidabad prescribing 27 days rest and certificate dated 15-11-2021 issued by Dr. P.K Adhikary prescribing rest for one month. Thus as per Medical Certificates the Petitioner was advised to take rest till 12-12-2021. As right to health is a basic right and amounts to right to life an employee is entitled to take rest as advised by doctor, unless the Employer under service rules makes arrangement for medical examination by specific doctor or hospital. However after 12-12-2021 there is no medical documents wherein it is advised further rest. Although, it may not be correct to

hold that the Writ Petitioner was absent willfully from 15-11-2021 but there are no sufficient materials to show prima-facie that absence beyond 12-12-2021 was due to unavoidable circumstance. As the object of Disciplinary proceedings is to find out guilt of an employee and award punishment according to law it would be just and proper to permit the Disciplinary Authority to award any minor punishment in accordance with the rules instead of directing de-novo enquiry at this stage. Writ petitioner who suffered from illness should not be made to face another enquiry which will cause mental pressure upon him, without any chance to improve his case of defence.

In any undertaking or department where upon inquiry it is found that an unauthorized absence of a high ranking official for a considerable period is detrimental to the undertaking and the said official has failed and neglected to discharge his duty and responsibility for the benefit of the undertaking the said official may be removed from the said post of responsibility to another post of less responsibility by demotion instead of removing from services or may be awarded any other minor punishment. In the instant case the Writ Petitioner suffered injury and was advised rest and thereafter was admitted to hospital for treatment of hepatitis and was also advised rest. Although till institution of Disciplinary proceedings Writ Petitioner was not advised rest but he was under treatment and expressed his physical weakness to work hence awarding of punishment of removal from service is harsh and should be set aside.

Hence this appeal is allowed in part. Order dated 7th October, 2024. Passed in Writ Petition WPA No. 379 of 2024 is modified to the extent that the Writ Petitioner/respondent no-1 be re-instated in service within 3 weeks from the date of communication of this Order. The Appellant no-1 Bank is permitted to award any minor punishment to the Writ Petitioner-in accordance with the Rules. The Writ Petitioner's absence upto 12/12/2021 shall not be treated to be unauthorized and with regard to the period from 13/12/2021 the Bank Authority may treat the said period as unauthorized but it shall only be confined to loss of salary and will not affect service record.

With regard to the date of removal till the date of re-instatement the Writ Petitioner is granted liberty to make representation for arrear salaries which shall be considered in accordance with law.

Urgent Xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

I agree

(Biswaroop Chowdhury, J.)

(Arijit Banerjee, J.)

After the judgment is delivered, Learned Advocate for the appellant prays for stay of operation of the judgment.

Such prayer considered and refused.

(Biswaroop Chowdhury, J.)

(Arijit Banerjee, J.)