



W.A.No.306 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 26.03.2025

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

W.A.No.306 of 2023

Dr.B.Kalaivannan

... Appellant

-Vs-

1. The Chairman-cum-Managing Director,
Indian Bank, Head Office,
Avvai Shanmugam Salai,
Royapettah,
Chennai - 600 014.

2. The General Manager,
Indian Bank Corporate Office,
Avvai Shanmugam Salai,
Royapettah,
Chennai - 600 014.

3. The Assistant General Manager,
HRM Department,
Indian Bank, Head Office,
Avvai Shanmugam Salai,
Royapettah,
Chennai - 600 014.

... Respondents

PRAYER : Appeal under Section 15 of Letters Patent against the order dated 06.01.2023 made in W.P.No.41069 of 2015.

For Appellant : Mr.S.N.Ravichandran



WEB COPY



W.A.No.306 of 2023

For Respondents : Mrs.Rita Chandrasekar
for M/s.Aiyar & Dolia

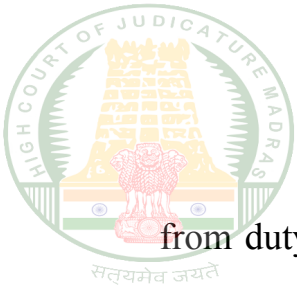
J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This intra Court appeal has been directed against the order dated 06.01.2023 made in W.P.No.41069 of 2015.

2. That the appellant was the writ petitioner who joined the respondent Bank on 23.04.1984 as Clerk / Shroff at Ocheri Branch, Vellore District. He Opted for 'Pension Scheme' on 23.03.1996 under the Indian Bank (Employees) Pension Regulations, 1995. He applied for temporary transfer to any one of Pune Branches, vide letter dated 22.06.2006. But according to the petitioner, his name was mentioned in the Voluntary Cessation of Employment Circular dated 10.01.2009, even without properly serving the notice, he was terminated from service. Challenging the same, he filed the said writ petition.

3. However the case of the Bank is that, from March 2007 onwards, without any permission or proper prior intimation, the petitioner had unilaterally stopped attending office, therefore it is a voluntary cessation or long absence



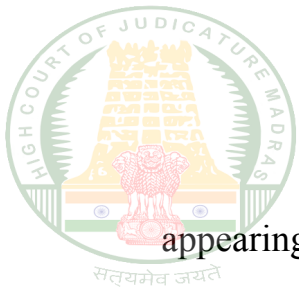
W.A.No.306 of 2023

from duty. In terms of Bipartite Settlement, the Bank issued two notices dated 26.06.2008 and 06.08.2008 asking the petitioner to return to work, which were returned to the Bank marked "Not claimed / returned to sender". Again a notice, i.e., third notice was sent to the petitioner's residence directly by the Branch asking him to report for work within thirty days. As there was no reply from the petitioner, considering the petitioner's case of voluntary cessation from attending office under unauthorized absence, the Bank was constrained to invoke the provisions under 8th Bipartite Settlement and as per the procedure, treated his action as voluntary cessation and issued necessary circular order on 10.01.2019.

4. It is the further case of the Bank that the petitioner had not challenged the Bank action in any manner till the date of filing the writ petition since he had been unauthorizedly absent and after the Bank passed the orders, decided to challenge it by way of this writ petition.

5. The case and the counter case as has been projected by both parties before the writ Court, having been considered, the writ Court has ultimately rejected the writ petition through the impugned order.

6. Assailing the said order, Mr.S.N.Ravichandran, learned counsel



W.A.No.306 of 2023

appearing for the appellant would submit that admittedly he had been absent for two years from duty as he wanted to pursue his higher studies in the Law Discipline and to pursue his Ph.D., for which permission had been sought for, which was not given, therefore he voluntarily to join course by being absent from duty.

7. For such absence from duty, if at all any punishment is to be awarded against the petitioner, the same shall be proportionate to the violation and here a complete removal of service or dismissal from service has been effected against the petitioner which is in violation of Bipartite settlement dated 10.04.2002.

8. In this context the learned counsel invited our attention to Clause 6 of 2002 Settlement whereby number of punishments have been provided in Clause 6(b), the punishment of removal from service with superannuation benefits, i.e., pension, provident fund and gratuity as would be do otherwise under the Rules or Regulations would be paid to the removed employee.

9. In this context, if at all a cessation order has been passed, under which he has been removed from service, that removal would not make him

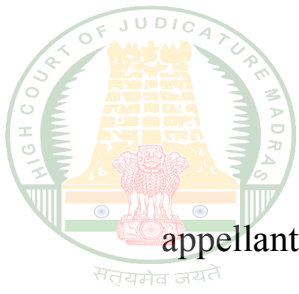


W.A.No.306 of 2023

disentitled even to receive the retiral and pensionary benefits as he has worked for several years to the Bank before such cessation.

10. In support of his contention, the learned counsel appearing for the appellant has relied upon a decision of the Hon'ble Apex Court reported in **(2014) 2 SCC 715** in the matter of ***Bank of Baroda Vs. S.K.Kool (Dead) through Legal Representatives and another.***

11. On the other hand, Mrs.Rita Chandrasekar, learned Standing Counsel appearing for the respondent Bank would submit that, insofar as the case of the appellant / petitioner is concerned, he had deserted his employment from March 2007 and in 2009, there has been a Bipartite settlement, based on which, if at all any voluntary absence or cessation from service is noticed to whom the notice have to be given by the Bank with thirty days time and thereafter if the notice has not been responded or no proper reply has been given, further thirty days notice to be given by the Bank requiring the employee to come and join the service and despite the notice having been served, the employee if has not responded, then the Bank can invoke the clause of cessation and accordingly, a notification can be issued that the employee had voluntary ceased from service, such a notification dated 10.01.2009 has already been issued in the case of the



W.A.No.306 of 2023

appellant / petitioner with effect from the date of desertion of employment i.e., 18.09.2008. When that being so, the procedure that has been contemplated in 2009 Bipartite settlement has been invoked by the Bank, therefore it cannot be stated that the case of the appellant /petitioner should have been dealt with under 2002 Settlement.

12. She would also submit that even under 2002 settlement, number of punishments have been provided, for which if the removal of service or dismissal from service has been imposed, that would not attach with any retiral or pensionary benefits as that would be specially mentioned in Clause 6(b) of 2002 Settlement which has not been invoked in the case of the appellant / petitioner, the learned Standing Counsel contended.

13. We have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

14. Assuming that 2002 Bipartite Settlement has to be invoked in the case of the appellant / petitioner, insofar as the guilt of the appellant is concerned, it



W.A.No.306 of 2023

has been admitted fact that he has been voluntarily absent for two years without

any authorization, therefore he deserved to be removed from service. When he is deserved to be removed from service, what kind of punishment to be awarded, whether the complete removal of service by way of dismissal or removal from service with superannuation benefits has to be given to him or not is a matter to be decided by the employer as there has been no compulsion that when a dismissal order is passed, it must be only treated as a removal with superannuation benefits.

15. In this context, the judgment cited by the learned counsel appearing for the appellant, i.e., (2014) 2 SCC 715 has made it very clear that if a removal is made with an attachment of the benefits, then only he / she is entitled to get such benefits. If the punishment is given without such benefits he is not entitled for such benefits also has been underlined. The relevant portion of the judgment of the Hon'ble supreme Court reads thus:

"15. The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction canvassed by the employer shall give nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be. From the



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W.A.No.306 of 2023

conspectus of what we have observed we have no doubt that such of the employees who are otherwise eligible for superannuation benefit are removed from service in terms of Clause 6(b) of the Bipartite Settlement shall be entitled to superannuation benefits. This is the only construction which would harmonise the two provisions. It is well-settled rule of construction that in case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both. Hence, we are of the opinion that such of the employees who are otherwise entitled to superannuation benefits under the Regulations if visited with the penalty of removal from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulations shall not be entitled to that."

16. Therefore, even the principle that has been enunciated in the said judgment is applied to the facts of the case, the appellant / petitioner is not entitled to seek for pensionary or retiral benefits.

17. Under 2008 Scheme as has been rightly pointed out by the learned Standing Counsel appearing for the Bank, such procedure contemplated in the case of voluntary cessation has been scrupulously followed by the Bank, this



W.A.No.306 of 2023

has been recorded by the learned Judge in the order impugned itself, on 26.06.2008 and 06.08.2008, two times notices have been given 'which has not been claimed or returned to the sender'. Again a third notice also has been sent that has also not been responded, therefore the Bank has no other option except to invoke the provision of 8th Bipartite settlement and to treat him as having been ceased from service voluntarily and issued a necessary circular order on 10.01.2019.

18. The said order dated 10.01.2019 by invoking the provision of 8th Bipartite Settlement is perfectly in order, it could not be found fault with.

19. Therefore, having considered all these aspects in proper perspective, the learned Judge since has rejected the writ petition through the impugned order, we do not find any plausible reason to interfere with the same.

20. Resultantly, this Writ Appeal fails and hence, it is dismissed. However, there shall be no order as to costs.



W.A.No.306 of 2023

(R.S.K., J.) (A.D.M.C., J.)
26.03.2025

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NCC : Yes

Index : Yes

Speaking Order : Yes

vji

To

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