

(2007) 03 CAL CK 0074

In the Calcutta High Court

Case No : F.M.A. No. 588 of 2006 and M.A.T. No. 3277 of 2005

Aditya Nath Banerjee

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 06-03-2007

Acts Referred:

Citation : (2007) 2 CHN 234

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Arunabha Basu, J

Bench : Division Bench

Advocate : Kashi Kanta Moitra and S.K. Halder, for the Appellant; Arubabha Ghosh and Arpita Datta, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal arises out of the Judgment and order dated August 18, 2005 passed by the learned Single Judge whereby and whereunder the writ petition filed by the appellant herein was dismissed.

2. The principal question involved in this appeal is when the resignation submitted by the appellant would become effective. It has been specifically urged on behalf of the appellant that the resignation submitted by the said appellant could be effective only on the date specifically mentioned by the competent authority of the bank in the letter of acceptance of the said resignation of the appellant herein but since the said appellant exercised his right to withdraw the resignation before the said resignation became effective, the resignation submitted earlier by the appellant should be treated as withdrawn and the appellant should be allowed to continue in the service of the bank.

3. From the records it appears that the appellant submitted a letter of resignation in plain paper on 11th October, 2001 and subsequently on 28th December, 2001 submitted his resignation in the prescribed form and manner through proper channel. The Branch Manager of the bank by written communication dated 12th June, 2002 informed the writ petitioner that the

appropriate authority of the bank has been pleased to accept the resignation of the said appellant from Bank's service with immediate effect but in the said communication it was also specifically mentioned that the appellant would retire from the branch from the close of the business on 15th June, 2002. The said letter of the Branch Manager of the bank dated 12th June, 2002 is set out hereunder:

(EMBLEM) Shri Aditya Banerjee (Messenger) State Bank of India Kulti Date : 12th June, 2002 Dear Sir,

Resignation

With reference to the above, we have to advise that your resignation from Bank's service has been accepted by the appropriate authority with immediate effect.

However, before leaving the Bank you are to liquidate the Bank's Loan/Advances as detailed below:

S1. Loan A/c Outstanding Intt. Total No. Amount (Rs.) (approx) Amount upto 30.6.02
1. Consumer 8,829:00 275.00 9,104.00 Loan 2. Conveyance 3,060.00 20.00 3,080.00
3. Festival 1,500.00 Nil 1,500.00 Adv. 4. Personal 5,087.00 190.00 5,297.00
18,476.00 485.00 18,961.00 Please note in absence of your confirmation of such liquidation of loan the above loan/advance will be recovered from your superannuation benefit for which you may claim for. You will retire from the Branch from the close of business on 15.06.02.

Please sign and return the duplicate copy of this letter as a Token of acknowledgement.

Yours faithfully,

(BRANCH MANAGER)

4. The appellant herein, however, on the very next day i.e. 13th June, 2002 decided to withdraw his resignation and accordingly, submitted a written representation to that effect to the Assistant General Manager of the bank intimating his decision regarding withdrawal of his resignation from the service of the bank. The said representation was received by the bank on 14th June, 2002 when the appellant was admittedly working in the bank as a regular employee. The said letter of withdrawal of resignation submitted by the appellant on 13th June, 2002 and received by the bank on 14th June, 2002 is set out hereunder:

To The Assistant General Manager Region IV State Bank of India Burdwan Zonal Office Burdwan

Through the Branch Manager State Bank of India, Kulti Branch

Dear Sir,

Withdrawal of resignation

With reference to letter on BM/26/35 dated 12th June, 2002 issued by the Branch Manager of Kulti Branch, I would like to pray before your honour that under deteriorating mental condition I tendered, my resignation from the Bank's service.

Now, I hereby withdraw my resignation letter submitted to you which may please be accorded to.

Thanking You, Date : 13th June, 2002 Yours faithfully, (Aditya Nath Banerjee)
Messenger with combined designation State Bank of India, Kulti Branch
Received subject to be approval to the appropriate authority. Sd/- 14.06.02

5. The Branch Manager of the said bank, however, by written communication dated 15th June, 2002 relieved the appellant from the bank's services pursuant to the earlier resignation and ignoring the subsequent representation submitted by the said appellant regarding withdrawal of the said resignation. The Branch Manager of the said bank further informed the appellant on 4th July, 2002 that the decision of the appropriate authority regarding acceptance of the resignation of the writ petitioner from bank's service is final.

6. Challenging the aforesaid decision of the bank authorities, the appellant herein filed the writ petition before this Court and the learned Single Judge while deciding the said writ petition held that the resignation of the appellant has been duly accepted by the bank and the appellant therefore, cannot ask for reinstatement in service.

7. It is, therefore, now to be decided whether the decision of the appropriate authority of the bank regarding acceptance of the resignation of the appellant from bank's service was valid and proper even though the said appellant exercised his right to withdraw the resignation before the same became effective.

8. Mr. Kashi Kanta Moitra, learned Senior Counsel representing the appellant submits that the appellant herein could not be relieved from the bank's service from the close of business of 15th June, 2002 due to submission of the resignation letter as the same was withdrawn before it became effective.

9. Mr. Arunabha Ghosh, learned Counsel of the bank, however, submits that the resignation of the appellant from the bank's service was accepted with immediate effect and the same has also been mentioned in the letter of the Branch Manager dated 12th June, 2002 addressed to the appellant herein. According to Mr. Ghosh, the appellant withdrew his resignation after the same became effective.

10. On examination of the aforesaid letter dated 12th June, 2002 issued by the Branch Manager of the bank although we find that the appropriate authority of the said bank accepted the resignation of the appellant from the bank's service with immediate effect but in the said letter it has also been specifically mentioned that the appellant would retire from the branch from the close of business on 15th June, 2002. Therefore, the jural relationship of employee and

employer between the appellant and the bank could not come to an end till 15th June, 2002. The letter of the appellant dated 13th June, 2002 withdrawing his resignation from the Bank's service was admittedly received by the concerned authority of the bank on 14th June, 2002 when the relationship of employer and employee did not come to an end.

11. It is well-settled that a prospective resignation can be withdrawn at any time before it becomes effective. In the present case, the resignation of the appellant from Bank's service could become effective from the close of business on 15th June, 2002 and the appellant had withdrawn the said resignation by submitting the written representation to that effect on 13th June, 2002 which was received by the Assistant General Manager of the bank on 14th June, 2002. Referring to the decision of the Hon''ble Supreme Court in the case of Shambhu Murari Sinha Vs. Project and Development India Ltd. and Another, , Mr. Moitra, learned senior Counsel of the appellant submits that in the present case, jural relationship of the employee and employer did not come to an end as the appellant withdrew his resignation from bank's service before the same became effective.

12. A Full Bench decision of the Hon''ble Supreme Court in the case of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, specifically held as follows:

51. It will bear repetition that the general principle is that in the absence of a legal, contractual or Constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office tenure of the resignor....

13. In our opinion, the competent authority of the respondent bank should not and could not have relieved the appellant from the bank's service upon accepting his resignation letter as the same was admittedly withdrawn by the appellant before it became effective. Undisputedly and undeniably, the appellant continued in service of the bank till June 15, 2002 and the appellant having withdrawn his letter of resignation before June 15, 2002 continued to be an employee of the said bank as the jural relationship of employer-employee between the bank and the appellant did not cease on the date when the appellant had withdrawn his resignation letter.

14. In view of the aforesaid settled legal position, the appellant herein is entitled to a declaration that his service under the respondent bank remained uninterrupted and the said appellant is also entitled to all the service benefits including arrears of pay and all other privileges and consequential service benefits by virtue of being an employee of the said bank.

15. The learned Advocate of the respondent bank, however, submits that if it is held by this Hon''ble Court that the appellant is still in service on account of withdrawal of his resignation before the same became effective then also this Court under Extraordinary Writ Jurisdiction cannot direct payment of back wages

straightaway. Mr. Ghosh further submits that the appellant herein is a workman under the Industrial Disputes Act and the said appellant has filed the writ petition straightaway before this Court instead of availing the alternative remedy. Referring to the decision of the Hon''ble Supreme Court in the case of Managing Director U.P. Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, Mr. Ghosh submits that whether a workman should be reinstated in public employment with or without full back wages, is a question of fact depending on evidence to be produced before the Tribunal and this Court in its Extraordinary Writ Jurisdiction cannot decide the same. Mr. Ghosh also submits that the appellant/writ petitioner is not in service since June 2002 and during this long 4 years 8 months is not known whether the writ petitioner was gainfully employed or not. In the aforesaid circumstances, it has been submitted on behalf of the respondent bank that this Court should not issue any direction regarding payment of full back wages to the appellant in the event the appeal filed by the appellant/writ petitioner is ultimately allowed.

16. Mr. Moitra, learned Counsel of the appellant, however, sought to distinguish the aforesaid decision of the Hon''ble Supreme Court referring to the facts and circumstances of this case and relying on the decisions of the Hon''ble Supreme Court in the case of Srikantha S.M. Vs. Bharath Earth Movers Ltd., and in the case of Shambhu Murari Sinha Vs. Project and Development India Ltd. and Another, . Mr. Moitra submits that in view of the aforesaid decisions of the Apex Court the appellant is entitled to receive full back wages alongwith all consequential benefits.

17. Undisputedly, the present case is not a case of dismissal from service on the charge of any misconduct. This is a simple case of resignation of an employee which was accepted by the authority of the bank although such resignation could not be accepted in view of the settled legal position pursuant to the various decisions of the Hon''ble Supreme Court. The respondent bank did not raise any question challenging the entitlement of the appellant/ writ petitioner to receive full back wages before the learned Single Judge. The authorities of the respondent bank also never produced any document nor also contended that the said writ petitioner/appellant herein was gainfully employed after 15th June, 2002, i.e. the date of when the said appellant was relieved from the bank's service. Moreover, in the case of Srikantha S.M. Vs. Bharath Earth Movers Ltd., and also in the case of Shambhu Murari Sinha Vs. Project and Development India Ltd. and Another, Hon''ble Supreme Court specifically held that the concerned employee would be entitled to full back wages with all consequential service benefits after reinstatement in service.

18. Mr. Ghosh, learned Counsel of the respondent bank placed much reliance on the decision of the Hon''ble Supreme Court in the case of Managing Director, Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, but, in our opinion, the aforesaid decision of the Apex Court cannot be made applicable in the facts of the present case. Accordingly, we hold

that the appellant herein is entitled to full back wages with all consequential service benefits for the period the said appellant was out from the service of the bank.

19. For the reasons discussed hereinbefore, the decision of the respondent bank in accepting the resignation of the appellant and relieving from bank's service at the close of business on 15th June, in spite of receiving the letter from the said appellant regarding withdrawal of the said resignation on 14th June, 2002 is declared illegal, unlawful and accordingly, the same is set aside. In the aforesaid circumstances, the order passed by the learned Single Judge upholding the action of the respondent bank is also liable to be set aside and the same is hereby set aside.

20. The respondents herein are, therefore, directed to treat the appellant herein in continuous service of the bank and allow the said appellant to rejoin his duty immediately and pay salaries and other admissible allowances regularly. The respondents are further directed to release all arrear salaries and other consequential service benefits to the appellant for the period the said appellant was out from the service of the bank. The respondent authorities, particularly, the respondent Nos. 2 and 3 are also directed to calculate the arrear salaries and other allowances due and payable to the said appellant for the entire period he was out of service till the date of his rejoining the duty in terms of this order within three weeks from the date of communication of this order and disburse the same to the appellant within a week thereafter positively.

21. This appeal is, therefore, allowed without any orders as to costs.

22. Let urgent xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Arunabha Basu, J.

I agree.

Later:

23. After pronouncement of the judgment, the learned Counsel of the appellant prays for stay of the operation of the judgment and order. We find no reason to grant such stay. Accordingly, the prayer for stay is refused.