
(2014) 10 KL CK 0339
In the High Court Of Kerala
Case No : W.P.(C). No. 31225 of 2010

C. Karunakaran

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0339

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : Abraham Vakkanal, Senior Advocate, Paul Abraham Vakkanal and Dijo Sebastian, Advocate for the Appellant; P.V. Surendranath, SC, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—Shorn of unnecessary details, the brief facts that are necessary for a disposal of the writ petition are as follows:

"The petitioner, while working as a Deputy Manager at the Currency Administrative Cell of the respondent Bank at Pattom in Trivandrum district, met with an accident on 11.05.2008, as a consequence of which, he was on leave from 12.05.2008. An application for leave, submitted by him for the period from 12.05.2008 to 03.07.2008, was sanctioned. In the meanwhile, the petitioner was served with an order of transfer to the Punnayur Branch and he was relieved from the Pattom Branch with effect from 05.06.2008. The said transfer was coupled with a promotion of the petitioner to the Middle Management Grade (Scale III). The petitioner challenged the said transfer through W.P.(C).No. 13645 of 2008. By an interim order dated 13.06.2008, this Court stayed the transfer of the petitioner. Thereafter, based on an order passed by the respondent Bank which, taking into account the medical condition of the petitioner as also the direction of this Court, recommended retaining the petitioner at Trivandrum in a supernumerary post till 15.07.2008, the writ petition was disposed by Ext.P3 judgment dated 30.06.2008. Although, the petitioner preferred an appeal against the said judgment, the same was dismissed by a Division Bench of this Court.

The order of transfer issued to the petitioner was, therefore, not interfered with by this Court. As regards the regularisation of leave, while it is the petitioners case that he had taken steps to try and get the leave for the period subsequent to 03.07.2008 regularised, it is not in dispute that he did not attend the office after 03.07.2008. This prompted the respondent Bank to issue Ext.P8 notice dated 04.02.2009, invoking the provisions of Rule 40 (3) of the State Bank of India Officers Service Rules, directing the petitioner to present himself before the Bank within a period of 30 days from the date of the notice. It would appear that, while the petitioner preferred a reply to Ext.P8 notice, he did not physically present himself before the respondent Bank, as was required in Ext.P8 notice. The respondent Bank, therefore, proceeded to pass an order treating him as having voluntarily vacated his employment on the expiry of the period set out in the notice. It is the case of the petitioner that, while this order passed by the respondent Bank was not served on him, he became aware of the said order only through Ext.P10 newspaper report. The petitioner, therefore, approached this Court, challenging the decision of the respondent Bank in Ext.P10 report, by filing W.P.(C).No. 13314 of 2009. By Ext.P12 judgment dated 17.06.2010, this Court disposed the writ petition, directing the petitioner to resort to the alternate remedy provided under Rule 40 (3) of the State Bank of India Officers Service Rules, by filing an appeal within a period of one month from the date of receipt of the judgment. Pursuant to the said direction, the petitioner preferred Ext.P13 appeal, and Ext.P14 supplementary appeal, before the Appellate Authority under the Rule. The Appellate Authority, thereafter, passed Ext.P15 order dated 26.08.2010, finding that the action taken by the Bank in terms of Rule 40 (3) of the State Bank of India Officers Service Rules, was not liable to be interfered with and that there was no procedural irregularity or legal infirmity in the said order. The appeal was thus dismissed by the Appellate Authority. In the writ petition, Exts.P8, P10, P11 and P15 are impugned and the petitioner seeks a reinstatement in service, as also a declaration that the action taken against him amounts to a termination of service that is disproportionate to the nature of the offence alleged to have been committed by him."

2. A Counter affidavit has been filed on behalf of the respondent Bank where the sequence of events leading up to the orders impugned by the petitioner in the writ petition, has been narrated. It is, in particular, pointed out that the petitioner has been on a relentless crusade against the respondent Bank by challenging every order of transfer that was served on him and further, not attending to his work at the respondent bank despite leave not having been sanctioned to him. It is pointed out that the decision taken by the respondent Bank, as evidenced by Ext.P10, was inevitable in view of the fact that the petitioner had not chosen to present himself before the respondent Bank pursuant to Ext.P8 notice that was sent to him in terms of Rule 40 (3) of the State Bank of India Officers Service Rules. Ext.P15 order of the appellate authority is sought to be justified on the contention that the appellate authority had considered the case of the petitioner, as projected in the appeal preferred by him, and come to a finding that the

petitioner was not even in a position to apply for leave or send an explanation to Ext.P8 notice send to him. These facts were taken into consideration for concluding that there was no valid reason for him not reporting for duty, or submitting any explanation to the notice, within the time granted to him under the notice.

3. I have heard Sri. Abraham Vakkanal, the learned Senior counsel appearing on behalf of the petitioner and Sri. P.V. Surendranath, the learned Standing counsel for the respondent Bank.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I note that pursuant to Ext.P12 judgment of this Court, the appellate authority was required to exercise the power available under Rule 40 (3) of the State Bank of India Officers Service Rules. The said Rule reads as under:-

"40(3). Where an officer who has not submitted an application for leave or where an officer having submitted his application was refused sanction of leave, absents himself for a period of 90 or more consecutive days or overstays the sanctioned leave by 90 or more consecutive days notwithstanding the provisions of sub-rule (2), the Bank may at any time thereafter give a notice to the officer at his last known address available with the bank calling upon him to report for duty within 30 days of the notice. If the officer does not report for duty within the stipulated period, he may, by an order of the Appointing Authority, be deemed to have voluntarily vacated his employment on the expiry of the said period set out in the notice. In such cases the office shall also be liable to pay to the Bank such notice monies as are payable in case of resignation as if he has been permitted to pay the emoluments in lieu of notice.

Provided, however, that an officer may appeal to the competent authority within a period of three years from the date of order recording voluntary vacation under the aforesaid rule. The Competent Authority shall consider such appeal to treat the said order as rescinded if it is satisfied that the officer was prevented by any sickness incapacitating him from reporting for duty within the prescribed time or for any other sufficient cause, and pass such orders as it may deem fit in the circumstances of the case."

5. It is clear from a reading of the said Rule that the 1st part of the Rule envisages a situation where an officer absents himself from work without any leave having been sanctioned to him. As per the Rule, if the absence is for a period of 90 or more consecutive days, or there is an overstay of sanctioned leave by 90 or more consecutive days, the Bank is empowered to issue a notice to the officer, at the last known address, calling upon him to report for duty within 30 days of the notice. If the officer does not report for duty within the said period of 30 days, then the appointing authority is permitted to draw an inference that the officer has voluntarily resigned from his employment on expiry of the period set out in the notice. The provision is, therefore, one that enables

the employer, in certain circumstances, to draw an inference, with regard to an employee, that the latter has abandoned his services under the employer. It is, therefore, that the Rule requires the officer, who has been unauthorisedly absent, to report before the employer within the period specified in the notice issued to him. The proviso to Rule 40 (3) indicates that the officer, against whom an adverse inference has been drawn by the employer Bank, can appeal to the competent authority, within a period of three years from the date of the order recording voluntary vacation, and the said authority has to consider such appeal and treat the said order as rescinded, if it is satisfied that the officer was prevented by any sickness incapacitating him from reporting for duty within the prescribed time or for any other sufficient cause. Thus, the Appellate Authority in this case was required to consider the appeal preferred by the petitioner for the sole purpose of ascertaining whether the petitioner was prevented, by any sickness that incapacitated him, or any other sufficient cause, from reporting for duty pursuant to Ext.P8 notice that was issued to him. In Ext.P15 order of the appellate authority, I do not find any consideration of this relevant aspect, that is mandated in the proviso to Rule 40(3). The appellate authority, in Ext.P15 order, cites the inaction on the part of the petitioner in submitting a leave application and giving a satisfactory reply within the period stipulated in Ext.P8 notice that was issued to him, as the reason for dismissing the appeal. In my view, the said two aspects are wholly alien to the exercise of the discretion contemplated under the first proviso to Rule 40(3). As already noted, the proviso requires the appellate authority to consider whether there were any valid reasons that justified the petitioners absence, pursuant to a notice insisting on his presence, before the employer. The non-submission of a leave application or the non-submission of a reply cannot be a ground from which the appellate authority can draw an adverse inference against an employee to whom a notice in terms of Rule 40(3) is issued. Thus, Ext.P15 order passed by the Appellate Authority cannot be seen as one passed in valid exercise of his discretion under the proviso to the Rule 40 (3) of the State Bank of India Officers Service Rules. It is trite that the discretion that is vested upon an authority under a Rule has to be exercised in a manner that conforms to the provisions of the Rule, and he cannot take to account irrelevant considerations while exercising his discretion. In that view of the matter, I quash Ext.P15 order of the Appellate Authority and direct him to consider the matter afresh, after affording the petitioner an opportunity of being heard. He shall pass fresh orders in the matter within a period of three months from the date of receipt of a copy of the judgment. It shall be open to the petitioner to produce such materials as he may deem necessary, to substantiate his contentions before the Appellate Authority, within a period of one month from the date of receipt of a copy of the judgment. The Appellate Authority, while considering the explanation given by the petitioner, shall keep in mind the purport of the Rule and the medical condition pleaded by the petitioner.