

(2010) 04 DEL CK 0035

In the Delhi High Court

Case No : Writ Petition (C) 14906 of 2004

Canara Bank

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2010) 6 ILR Delhi 133

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Hetu Arora and Amrita Sharma, for the Appellant; R.V. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner bank in this petition impugns the award dated 19th April, 2004 of the Industrial Tribunal on the following reference:

Whether the action of the management of Canara Bank in considering the workman Sri Ram Pal Sharma sub-staff as voluntarily retired from services of the Bank w.e.f. 3rd December, 1988 on account of his alleged absence from duty is legal and justified? If not, to what relief is the workman entitled to?

2. The respondent No. 3 workman was employed as a Class-IV employee with the erstwhile Lakshmi Commercial Bank which had merged with the petitioner Canara Bank. The respondent No. 3 workman was at the relevant time posted at Bulandshahr; he applied for medical leave which was sanctioned for a [period of four months]. It is the case of the petitioner bank that the respondent No. 3 workman remained absent unauthorizedly from 14th November, 1985 to 14th March, 1988 inspite of letters dated 20th August, 1986, 8th October, 1986 and 13th January, 1987 asking him to report for duty. It appears that the respondent No. 3 workman joined duty of the petitioner bank after 14th March, 1988 but again absented without information / leave application w.e.f. 25th May, 1988. A

letter dated 5th August, 1988 is stated to have been issued to the respondent No. 3 workman to join duties and which remained un-replied. The petitioner bank on 20th September, 1988 issued a notice to the respondent No. 3 workman in accordance with Clause XVI of the IVth Bipartite Settlement Agreement between the petitioner bank and its employees, calling upon the respondent No. 3 workman to join duty within 30 days and further informing him that upon his failure to so join the duty, he will be deemed to have voluntarily retired from the services of the petitioner bank on the expiry of 30 days therefrom. The said notice was served on the respondent No. 3 workman on 3rd October, 1988.

3. The respondent No. 3 workman sent a letter dated 2nd November, 1988 to the petitioner bank requesting another 30 days time to join duty. It was stated in the said letter that the children of the respondent No. 3 workman had been severely ill for the last six months; two of the children were stated to be suffering from polio and in whose care the respondent No. 3 workman claimed to be busy; he also stated that he was neither employed elsewhere nor carrying on any business. The respondent No. 3 workman also stated that he could take complete medical care of his children in Delhi and requested for transfer to Delhi and promised that if transferred to Delhi, he will perform his duty diligently. However, the respondent No. 3 workman did not join duty within the said 30 days of 2nd November, 1988 also and the petitioner bank on 7th December, 1988 issued a letter deeming the respondent No. 3 workman to have voluntarily retired from service of the petitioner bank with effect from 3rd December, 1988, in terms of Clause XVI of the IVth Bipartite settlement agreement as aforesaid.

4. Upon dispute being raised by the respondent No. 3 workman, reference aforesaid was made. The Industrial Tribunal has in the award impugned in this petition held that there was no ground for the petitioner bank to proceed under Clause XVI aforesaid; there was nothing on record to show that the respondent No. 3 workman had no intention to continue in the service of the petitioner bank or had taken employment elsewhere. It was further held that the petitioner bank had not considered the request of the respondent No. 3 workman in his letter dated 2nd November, 1988 for transfer and not even replied to the same. It was held by the Industrial Tribunal that Clause XVI applies only in cases of desertion i.e. where there is absence from duty without any intimation and if there is any intimation from the employee but the absence is unauthorized, the petitioner bank should take action in terms of disciplinary procedure laid down in the settlement agreement and not in terms of Clause XVI aforesaid. The Industrial Tribunal accordingly directed reinstatement of respondent No. 3 workman but with only 30% of back wages.

5. Aggrieved therefrom this writ petition has been preferred. This Court vide order dated 13th September, 2004 stayed the operation of the impugned award subject to the petitioner depositing the awarded amount in this Court. A sum of Rs. 93,478.65p was deposited by the petitioner. The said order has continued till now.

6. The respondent No. 3 workman died on 5th January, 2006 and his legal heirs were substituted vide order dated 24th January, 2007. The respondent No. 3 workman prior to his demise had made an application u/s 17B of the I.D. Act. This Court vide order dated 13th March, 2007 directed the petitioner bank to pay the last drawn wages to the legal heirs of the respondent No. 3 workman, from the date of the award till the date of the demise of the respondent No. 3 workman. The amount of Rs. 93,478.65p deposited by the petitioner was also ordered to be released to the legal representatives of the respondent No. 3 workman and has been received by them.

7. The petitioner bank has however not complied with the aforesaid order u/s 17B of the I.D. Act. It is the stand of the counsel for the petitioner bank that in terms of the said order, a sum of only Rs. 32,145/- was payable; that the respondent No. 3 workman had taken a housing loan from the petitioner bank and amounts were due where-under; that the petitioner bank instituted a suit for recovery of the said amounts in the Court of the Civil Judge, Bulandshahr and a decree passed in favour of the petitioner bank. The petitioner bank in the affidavit dated 28th March, 2008 filed before this Court stated that a sum of Rs. 41,362.75p was due under the said decree. Subsequently, in the affidavit dated 24th July, 2009, it is stated that a sum of Rs. 80,558.75/- is due under the said decree. The amount payable in compliance of the order u/s 17B of the I.D. Act was thus sought to be adjusted against the said amounts. The counsel for the legal heirs of the respondent No. 3 workman however states that the decretal amount stands paid. The counsel for the petitioner bank after taking instructions controverts.

8. The Supreme Court in Punjab and Sind Bank and Others Vs. Sakattar Singh, has held that no enquiry may be conducted where the standing order of the bank provides a procedure for treating such absentee employee to have deemed to have voluntarily retired after a particular period of unauthorized absence. To the same effect is the recent dicta in The Regional Manager, Central Bank of India Vs. Vijay Krishna Neema and Others, . The counsel for the petitioner bank in this regard relies on Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others,

9. Clause XVI in the IVth Bipartite agreement of the petitioner bank does provide a procedure for treating an absentee employee to have deemed to have voluntarily retired after a particular period of unauthorized absence. The validity thereof cannot be thus in doubt. What remains to be considered is whether such procedure has been complied with or not. However, before proceeding to determine the aforesaid factual aspect, the legal position may be clarified further.

10. The Division Bench of this Court in Shakuntala's Export House (P) Ltd. Vs. Secretary (Labour) and Others held that abandonment amounts to misconduct which requires proper enquiry. The judgment of the Single Judge of this Court upheld by the Division Bench is reported as Shakuntala Export House (P) Ltd. Vs. P.O. Labour Court X and Another, To the same effect is another judgment of this Court in Municipal Corporation of Delhi Vs. Shri Begh Raj, laying down that if the

workman had abandoned employment, that would be a ground for holding an enquiry and passing an appropriate order and that having not been done, the action of MCD could not have been sustained. The Supreme Court in *D.K. Yadav Vs. J.M.A. Industries Ltd.*, has held that even where the standing orders of the employer provided for dismissing the workman from service for unexplained absence, the same has to be read with the principles of natural justice and without conducting domestic inquiry and without giving an opportunity of being heard, termination of service on the said ground cannot be effected.

11. Thus even though Clause XVI of the IVth Bipartite Agreement does provide for a procedure, what needs to be determined is whether the same was complied and the principles of natural justice were satisfied or not.

12. The purpose of the procedure prescribed is to enable the bank to consider the explanation if any rendered by the employee in response to the notice required to be issued under the said clause. In the present case though the respondent No. 3 workman had sent a reply within 30 days of the notice but the petitioner bank has not considered the said reply before issuing the order dated 7th December, 1988 of deemed voluntary retirement from the service of the bank. The Supreme Court in *Viveka Nand Sethi (supra)* found the appropriate authority of the Bank in that case to have considered the explanation furnished by the employee. The purpose, in Clause XVI aforesaid, of issuing the notice is to enable the appropriate authority in the bank to apply its mind as to whether a case of deemed resignation is made out or not. In the present case, the explanation furnished by the respondent No. 3 workman in his response dated 2nd November, 1988, giving reasons for his absence and seeking transfer to Delhi have not been considered at all before issuing the order of deemed voluntary retirement. The order is absolutely silent in this regard. The principle of natural justice of giving an opportunity of being heard is not to be an empty or abstract exercise. Giving of an opportunity of hearing has a corresponding obligation to deal with the representation/explanation and to give reasons for the decision. An opportunity of hearing would be meaningless and its purpose would be frustrated, if the authority giving the hearing does not consider the representation of the noticee or does not give any reasons for agreeing or disagreeing with the same. The principle requiring reasons to be given in support of an order is a basic principle of natural justice and it must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law (see *MARUTI UDYOG LTD. Vs. INCOME TAX APPELLATE TRIBUNAL and Others*, and *Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and Brothers*,

13. As discussed herein above, mere absenteeism is a misconduct requiring enquiry. The Courts have held Clause of deemed resignation to be valid provided procedure is provided therein and the principles of natural justice are followed. In the present case, principles of natural justice have not been followed. Therefore, there is no compliance with the procedure provided in the Clause of deemed

retirement. No case for interference in the award is made out.

14. However, the relief of reinstatement is now not possible in view of the demise of the respondent No. 3 workman. The respondent No. 3 workman remained alive for approximately two years after the date of the award. The award in so far as for the relief of 30% back wages has already been complied with as aforesaid. I deem it appropriate to award lump sum compensation to the legal representatives of the respondent No. 3 workman in the sum of Rs. 1,00,000/- in lieu of reinstatement. The said amount is besides the liability u/s 17B. In view of the conflicting statements regarding payment of the amount of the decree obtained by the petitioner bank against the respondent No. 3 workman, the same shall have no bearing in so far as the payment of the compensation aforesaid is concerned.

15. The writ petition is therefore dismissed. However in view of subsequent event of demise of workman the award in so far as for reinstatement is modified as aforesaid to payment of lump sum compensation of Rs. 1 lac in lieu of reinstatement. The petitioner bank is directed to make the payment of said compensation amount within six weeks hereof failing which the same shall incur simple interest at 10% per annum. No order as to costs.