

(2002) 09 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 610 of 2001

Dena Bank and Others

APPELLANT

Vs

Devinder Kumar

RESPONDENT

Date of Decision : 26-09-2002

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2002) 09 P&H CK 0053

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Sunil Chadha, for the Appellant; H.S. Gill, Senior Advocate and Hari Chand, for the Respondent

Final Decision : Allowed

Judgement

M.L. Singhal, J.—Devinder Kumar was recommended for appointment in the Clerical Cadre post by the Secretary, Banking Service Recruitment Board, New Delhi. On the basis of that recommendation, he was appointed as Cashier-cum-Clerk in the office of Dena Bank, Ludhiana. He was awarded appreciation letter by Dena Bank, Regional Office, New Delhi for his honest and good work. As per him, when he was on leave, Dena Bank, Regional Office served him with notice to report for duty at Dena Bank, Ludhiana, Branch Office within 30 days of the said notice. He went to the office of Dena Bank, Ludhiana pursuant to that notice for joining duty on 12.8.1989. He was, however, not allowed to join duty by the Branch Manager, Dena Bank, Ludhiana. Instead, he received Memo No. NDR PER 9576-89 dated 24.11.1989 deeming him to have voluntarily retired from the bank service.

2. Plaintiff Devinder Kumar filed suit for declaration against Dena Bank to the effect that office Memo No. NDR PER 9576-89 dated 24.11.1989 issued by Dena Bank, Regional Office, defendant No. 2 deeming him to have retired from bank service was illegal, void, ultra vires, unjust, mala fide, arbitrary, capricious, against the principles of natural justice, inoperative and not binding upon him

and further that he should be deemed to have always been in continuous service of Dena Bank for mandatory injunction directing the defendant Dena Bank to allow him to join duty. It was alleged in the plaint that no inquiry was conducted. No opportunity was afforded to him. He was given appointment as Cashier-cum-Clerk in the office of Dena-Bank, Ludhiana Branch vide letter RECTT/P-1437/83, dated 1.11.1983. He was confirmed as Cashier-cum-Clerk w.e.f. 1.5.1984 and was awarded appreciation letter No. NDR:PER:KD:8760:85 dated 25.6.1985 by Dena Bank Regional Office, New Delhi for his good work. While he was on leave, Dena Bank, Regional Office, New Delhi, served him with notice calling upon him to report for duty at Ludhiana within 30 days of the said notice. He went to Ludhiana Branch Office, Dena Bank to join duty on 12.8.1989 but he was not allowed to join duty on the ground that Dena Bank, Regional Office, New Delhi had directed them not to allow him to join duty. He submitted application dated 12.8.1989 to the Branch Manager, Dena Bank, Ludhiana to allow him to join duty but to no effect. He filed many representations but to no effect. Memo No. NDR:PER:9576:89 dated 24.11.1989 deeming him to have voluntarily retired from the bank service is without jurisdiction, against the principles of natural justice and even against the provisions laid down in fourth Bipartite Settlement dated 23.2.1989 and 10.4.1989.

3. The defendants contested the suit of the plaintiff urging that since 21.10.1988, the plaintiff had not been attending his duty at Ludhiana Branch since 21.10.1988, he had absented himself from work for a period of more than 90 days consecutively and without any leave to his credit. He was called for duty at Ludhiana Branch of Dena Bank within 30 days or to give satisfactory explanation in writing for his aforesaid absence failing which he will be deemed to have voluntarily retired from the service of Dena Bank in view of Fourth Bipartite Settlement dated 23.2.1989 and 10.4.1989. It was denied that the plaintiff ever reported for duty at Ludhiana Branch after service of the said notice dated 28.7.1989. He submitted his reply dated 12.8.1989 to the defendant in which no satisfactory explanation was given to his continued absence from duty for a period of more than 90 days. He remained deliberately absent from duty on account of his employment with M/s. HIM VESTS Pvt. Jalandhar City. The Bank later on learnt about his employment with M/s HIM VESTS Pvt. Ltd. Jalandhar from various documents received in the office of Dena Bank either from the State Bank of India or otherwise because the said M/s. HIM VESTS Pvt. Ltd. Jalandhar obtained a loan from the State Bank of India and executed loan documents. It was urged that the Memo issued by Dena Bank, Regional Office, New Delhi deeming the plaintiff to have voluntarily retired from the bank service was quite legal.

4. On the pleadings of the parties, the following issues were framed:

"1. Whether the plaintiff is entitled for declaration as prayed for ? OPP

2. Whether the suit is not maintainable ? OPD

3. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction ? OPD

4. Whether the plaintiff has not come to the court with clean hands ? OPD

5. Relief.

5. Vide Order dated 22.12.1994, Sub Judge IInd Class, Jalandhar dismissed the plaintiffs suit in view of his findings that the plaintiff had been called upon to join duty within 30 days of the notice dated 28.7.1989, he did not join duty. He joined some private company M/s HIM VESTS Jalandhar and became Director in this company. He applied for loan in the State Bank of India. He executed various documents in favour of State Bank of India and involved himself in the carrying on his business. He remained absent for more than 90 days consecutively without any leave to his credit. He was deemed to have voluntarily retired from the service of the Dena Bank as he had voluntarily left service on the Bank and joined the said company. Civil court was found to have jurisdiction to go into the question of the throwing out of an employee of the bank from its service.

6. The plaintiff went in appeal, which was allowed by the learned Additional District Judge, Jalandhar vide order dated 2.5.2000,

7. Not satisfied with the decree passed by the Additional District Judge, Jalandhar dated 2.5.2000, Dena Bank has come up in appeal to this court.

8. I have heard the learned counsel for the parties and have gone through the records of the case.

9. In this appeal, the following questions of law arise which are substantial questions of law:

i) Whether Memo No. NDR:PER:9576:89 dated 24.11.1989 issued by the Dena Bank, Regional Office, New Delhi deeming the plaintiff to have voluntarily retired from the bank service is not cognizable by the Civil Court but is cognizable by the Labour Court under the Industrial Disputes Act?

ii) Whether the plaintiff was a workman under the Industrial Disputes Act and that any dispute between him as an employee of Dena Bank touching his service was an Industrial Dispute cognizable by the Labour Court under the Industrial Disputes Act and not by the civil court?

iii) Whether the right of the plaintiff to remain in service is covered by Fourth Bipartite Settlement between Dena Bank and its employees and the plaintiff cannot bring in aid any provision of the Constitution of India for saving him from being thrown out of job namely Article 311 of the Constitution of India read with Article 12 thereof?

iv) Whether compulsory retirement from service is a "major punishment" as provided in the Service Rules and no major punishment can be inflicted on any employee of the bank without complying with the rules covering infliction of

major penalties?

v) Whether fourth Bipartite Settlement can take precedence over statutory Rules?

10. It was submitted by the learned counsel for the appellant that the respondent was serving in clerical cadre with the appellant bank and posted at Ludhiana. He absented from employment w.e.f. 21.10.1988 and remained absent for more than 90 days consecutively without there being any leave to his credit. He was called upon to join duty within 30 days or else to give satisfactory explanation in writing for his aforesaid act failing which he would be deemed to have voluntarily retired from the service of the appellant Bank in view of Fourth Bipartite Settlement dated 23.2.1989 and 10.4.1989. It was submitted that the respondent plaintiff did not report for duty despite the said notice dated 28.7.1989 but submitted reply dated 12.8.1989 in which he gave no satisfactory explanation for his continued absence for more than 90 days. It was submitted that in fact he was in the employment of M/s HIM VESTS Pvt. Ltd., Jalandhar City. It was submitted that the appellant bank is a Nationalised Bank having busy schedule of work in its Ludhiana Branch. Finding extreme difficulty on account of adamant reckless and negligent attitude on account of which public interest and service is suffered badly and finding no other alternative, the appellant bank formally passed an order dated 24.11.1989 intimating him the voluntary retirement/cessation of service in terms of the provisions contained in Fourth Bipartite Settlement dated 23.2.1989 and 10.4.1989. The relevant provisions of Fourth Bipartite Settlement envisaging the compulsory retirement reads as under:

"When an employee absents himself from work for a period of 90 days or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/ subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within thirty days of the date of notice, stating, inter alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken upon another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service."

11. It was submitted that Devinder Kumar plaintiff remained absent from duty continuously from 21.10.1988 onwards for more than 90 days consecutively without there being any leave to his credit. He was served with a notice dated

28.7.1989 requiring him to join duty within 30 days. He did not report for duty within the said period of 30 days nor he gave any satisfactory explanation in writing for his aforesaid absence from duty for 90 days consecutively. It was submitted that when he failed to give explanation in writing justifying his absence from duty for more than 90 days, he was justifiably declared to have voluntarily retired from service in terms of the Fourth Bipartite Settlement between the employees and the Management. It was submitted that he remained absent from duty on account of his employment with M/s HIM VESTS Pvt. Ltd., Jalandhar in which he was a Director, it was submitted that the respondent vacated his employment with the bank on account of his continued absence for more than 90 days consecutively for which he had no satisfactory explanation to make, Had he given a satisfactory explanation of his absence from duty, he could have been allowed to join duty. It was submitted that in this case, his absence was deliberate as he took up employment with M/s HIM VESTS Pvt. Ltd. Jalandhar City in which he was a Director. He absented w.e.f. 21.10.1988. He did not report for duty despite notice dated 28.7.1989 but submitted reply dated 12.8.1989, wherein no satisfactory explanation was given at all for his continued absence for more than 30 days. It was submitted that voluntary cessation of employment by him has to hold the filed when the same is permitted by the provisions of said clause of the Fourth Bipartite Settlement.

12. Learned counsel for the respondent on the other hand submitted that Fourth Bipartite Settlement has no legal force as it is not backed by any statutory Rules. Even otherwise, Bipartite Settlement which contains clause providing for automatic termination of service of a permanent employee is invalid and has no effect on the rights of a permanent employees. It was also submitted that absence from duty is a "misconduct". Without holding inquiry and without providing him opportunity of being heard for his alleged absence from duty, which amounts to "misconduct" on the part of the employee, he could not be thrown out of job. In my opinion, the plaintiff would be deemed to have voluntarily retired from service of Dena Bank in view of Fourth Bipartite Settlement Dated 23.2.1989 and 10.4.1989. I do not think that there is any illegality, or unconstitutionally about the said clause in Fourth Bipartite Settlement. It was with a view to keep the relations of the employees of a bank organisation and the bank Organisation itself that the Fourth Bipartite Settlement was drawn up. It is a magna carta from which flow the rights and obligations of the employees and the banking organisations towards each other which both of them have to adhere to.

13. It was submitted by the learned counsel for the respondent that provision as to voluntary cessation of employment was deleted in the Seventh Bipartite Settlement.

14. Suffice it to say when the respondent-plaintiff was declared to have vacated his job because of continued absence from duty for more than 90 days which was for no justifiable cause, the above said clause was there in existence in the

Fourth Bipartite Settlement.

15. Civil Court will have jurisdiction to try the suit. It was held in Bombay Telephone Canteen Employees" Association, Prabhadevi Telephone Exchange Vs. Union of India and another, that "there would have been two streams of thinking simultaneously in the process of development to give protection to the employees as an instrumentality of the State and the rules are made amendable to judicial review where there exists no statutory or analogous rules/instructions, the provisions of the I.D. Act get attracted. The employees are entitled to avail constitutional remedy under Article 226 or 32 or 136, as the case may be. The remedy of judicial review to every citizen or every person has expressly been provided in the Constitution. It is a fundamental right of every citizen. In the absence of statutory/administrative instruction in operation, the remedy of reference u/s 10 of the I.D. Act is available. Therefore, two streams namely, remedy under the I.D. Act by way of reference and remedy of judicial redressal by way of proceedings under Article 226 or a petition filed before the Administrative Tribunal to the aggrieved persons, are co-existing".

16. It was submitted that the respondent had, thus, two remedies. He could go to the Labour Court or he could go to the Civil Court. If he has chosen between the two remedies, that is well and good. It was submitted by the learned counsel for the appellant that the Civil Court cannot grant him reinstatement and back wages. Relief of reinstatement and back wages could be granted only by the Labour Court under the Industrial Disputes Act. In support of this submission, he drew my attention to Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another, where it was held that suit for declaration that dismissal of the plaintiff from service was bad and void, for back wages and for injunction preventing the employer from giving effect to the order for dismissal is in substance a suit for the relief of reinstatement and back wages and is therefore, not maintainable before Civil Court. Jitendera Nath was an employee of M/s Empire of India and Ceylone Tea Co. Ltd. Calcutta. To this company the Industrial Disputes Act was applicable. Standing orders framed under Industrial Employment (Standing Orders) Act, 1946 were also applicable. This company did not appear to have any statutory backing. Civil Court was found to have no jurisdiction so far as the grant of relief of reinstatement and back wages was concerned.

17. So far as the case in hand is concerned it pertains to an employee of Dena Bank. These banks are governed by their own Banking Regulation Acts.

18. It was submitted by the learned counsel for the respondent that the respondent could not have been weeded out so unceremoniously. There should have been inquiry into the factum of his absence. If factum of absence without justifiable cause had been brought home to him, his services could have been terminated. In support of this submission, he drew my attention to Uptron India Limited Vs. Shammi Bhan and Another, where it was held that any clause in the Certified Standing Orders providing for automatic termination of service of a

permanent employee, not directly related to "Production" in a factory or Industrial Establishment, would be bad if it does not purport to provide an opportunity of hearing to the employee whose services are treated to have come to an end automatically.

19. Suffice it to say, clause providing for voluntary cessation of employment with the bank on the employee's remaining absent for certain period without any justifiable cause has to be given effect to when this clause was inserted and assented to by the Management as well as by the employees association on all India Level when Bipartite Settlement was drawn up.

20. For the reason given above, this appeal succeeds and is accordingly allowed. Judgment and decree passed by the learned Additional District Judge, Jalandhar dated 2.5.2000 are set aside and those of Sub Judge IInd Class, Jalandhar dated 22.12.1994 are restored. In consequence, the plaintiffs suit is dismissed. No order as to costs.