
(2002) 03 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14428 of 1996

Hanumantha Rao V.

APPELLANT

Vs

Punjab National Bank and Another

RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Citation : (2002) 4 ALT 487 : (2002) 3 LLJ 1016

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : P. Bhaskara Menon and K. Sesharayajyam, for the Appellant; E.S. Ramachandra Murthy, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The writ petition is filed for a writ of mandamus declaring the notice issued by 1st respondent to the effect that the petitioner had taken voluntary retirement from the Bank as published in Eenadu Paper dated July 30, 1992 as illegal and for a direction to permit him to join as Clerk in the respondents- Punjab National Bank, hereinafter referred to as "Bank" in short, with all consequential benefits and other suitable orders.

2. It is stated by the writ petitioner that he had joined the services of the Bank in the year 1975 as Attender and was promoted as Clerk in the year 1981 and worked as Clerk at various places from 1981 to 1992 and had been discharging his duties to the best of his ability and to the satisfaction of his superiors. It is further stated that while he was working as Clerk at Nizamabad he fell sick and applied for leave for 15 days i.e., from October 3, 1991 and as he could not recover immediately as he was suffering from jaundice he had extended the leave up to July 30, 1992 from time to time. It is further stated that along with his leave application he had submitted the change of address and leave address also and when he had extended leave for the first time he had submitted Doctor's certificate. It is further stated that there was no notice for communication from the Bank received by the petitioner refusing his leave and

hence he was under the bonafide impression that he had been granted leave applied for and to his surprise he came across the paper publication dated July 30, 1992 stating that notices were sent to his address calling upon him to join duty which were returned to the Bank with endorsement that the addressee was not available and hence it should be deemed that he had taken voluntary retirement from the said date. It is further stated that the writ petitioner had sent several representations explaining his stand, but unfortunately in spite of several representations and also appeal to the 2nd respondent dated November 5, 1992, his request was not considered and hence the Writ Petition for the reliefs prayed for supra.

3. A counter-affidavit in detail was filed wherein all the details had been narrated and a specific stand was taken that the writ petitioner had been highly irregular and the past conduct also reveals the same and as far as the present action is concerned, it was taken in accordance with the Bipartite Settlement and there is no illegality or infirmity.

4. Inasmuch as a detailed counter-affidavit was filed by the Bank narrating all the factual aspects, a lengthy reply affidavit was filed taking a specific stand that this was done intentionally and the petitioner was unanimously elected as Branch Secretary of the All India Bank Employees Association of the Nizamabad Branch and this has become an eye-sore and hence wantonly the said action had been initiated and ultimately it was directly published as though the writ petitioner had voluntarily retired and it is in gross violation of the procedure.

5. Dr. P. Bhaskar Mohan, the learned counsel representing the writ petitioner had strenuously contended that the deemed voluntary retirement is a newly coined word in service Jurisprudence and the same is unknown to law. The learned counsel also had contended that the factual aspects clearly go to show that there was no notice and hence the action initiated under the Bipartite Settlement is bad in law. The learned counsel also had drawn my attention to several Bipartite Agreements and also Sastry Award and Desai Award and had contended that the absence of the writ petitioner, even if it is to be taken to be unauthorized, which in fact is not so, at the best it may result in some punishment and not in the extreme step of throwing the writ petitioner out of service. The learned counsel further contended that even otherwise, the writ petitioner is entitled to 18 months leave period and even if it is construed to be unauthorized absence, at the best some minor punishment can be inflicted, that too after holding proper enquiry and at any rate, throwing the writ petitioner out of service by a paper publication is highly disproportionate and too harsh a punishment. The learned counsel further pointed out that the very fact that this provision had been subsequently deleted, will definitely go to show that this kind of deemed voluntary retirement, in normal circumstances, cannot be resorted to. It was further contended that the termination of service in the present matter is definitely victimization and the correspondence also shows that the letters had been received by the Bank, but in spite of that the present action had been

initiated.

6. Sri Srinivas, the learned counsel representing Sri E.S. Ramachandra Murthy, appearing for the respondents-Bank on lie contrary had contended that the conduct of the petitioner also may have to be taken into consideration in the facts and circumstances of the case. The learned counsel had produced the record and had pointed out that the letter addressed by the petitioner on October 3, 1991 reads as though he was suffering from dysentery and requested for grant of leave for two days i.e. on October 3, 1991 and October 4, 1991. The learned counsel further pointed out that the ground taken in the affidavit that the writ petitioner fell sick and applied for leave for 15 days on October 3, 1991 is totally a story created for the purpose of getting reinstatement. The learned counsel had drawn my attention to several details narrated in the counter affidavit and had contended that the Management of the Bank had taken a sympathetic view at a particular point of time and in spite of that he had not changed his method or mode of attending to duties and in such circumstances there is no point in making any allegations against the Bank as such. The learned counsel also had drawn my attention to Clause XVI of the Bipartite Settlement dated September 17, 1984 and had contended that the Bank is having power to proceed in accordance with the said Bipartite Settlement which is binding. The learned counsel placed strong reliance on T. Venkateswarlu Vs. Branch Manager, State Bank of India, Vijayawada and Another, .

7. Heard both the counsel at length and also perused the material available on record.

8. The petitioner was appointed as Peon in the year 1972 on temporary basis in leave vacancies in various Branches of Hyderabad and Secunderabad and in the year 1975 he was appointed as probationary peon-cum-watchman and was posted to Nandigam of Mahaboobnagar District of Andhra Pradesh and after completion of the probationary period of six months, the petitioner was confirmed in that position and was made permanent in the year 1976 and later he was promoted as Dafthari in 1979 and was further promoted as Clerk-cum-Godown Keeper in 1981 and he remained in the same position till 1991 and he had written the promotion post in the year 1991 and due to ill-health he had applied for sick leave. It is also stated that the petitioner was continuously absent for 105 days while he was working at Guntur and he had explained the position to the authorities and they were satisfied with the explanation and had reinstated him and hence this conduct cannot be taken into consideration. It is also stated that the notices were addressed not to the proper address or the permanent address, but were sent to some erstwhile address and hence the same were returned with endorsement "party left". It is no doubt true that several details had been mentioned in the reply affidavit filed to show that the Bank is vindictive and with an intention to victimize only the action had been initiated and the Bank is not coming with true version. Several facts relating to the correspondence also had been narrated in detail. It is pertinent to note that

all these details had been narrated only in reply affidavit, but however an explanation was given by the counsel for the writ petitioner that in the light of the stand taken in the counter affidavit, a necessity was felt to file a reply affidavit in detail. In the counter affidavit filed by the Bank it was stated that notice for voluntary cessation of employment was issued by the Bank on March 13, 1989 advising the petitioner to join within 30 days and the petitioner responded to the said notice on April 11, 1989 informing that he was on continuous leave on account of his ill- health and requested the Bank to permit him to return to duty and the Branch Manager, Guntur was advised to permit the petitioner to report for duty, after the petitioner was checked by a Doctor, but the petitioner did not report for duties and thereafter a letter was issued to the petitioner on June 6, 1989 to respond, to which the petitioner requested for a personal hearing and he was given personal hearing on August 26, 1989 and the petitioner was advised to get himself examined by a Civil Surgeon and thereafter the Zonal Office, Madras permitted him to resume duties and thus sympathetic view was taken though the petitioner was absent for a continuous period of 105 days while working at Guntur. It is also specifically stated that the petitioner never stayed at the places where he gave the addresses. It is further stated that the petitioner was absent from duty without information to the Bank and without any application stating the reasons for his absence from October 3, 1991 and accordingly the Manager, Branch Office, Nizamabad vide his registered letter dated April 10, 1992 advised the employee to report for duty and the notice was sent to the address recorded with the Bank and the notice was returned by the postal authorities with the message "Party left, return" the allegation that the petitioner extended leave upto July 30, 1992 from time to time and along with leave application he had submitted change of address and leave address and submitted Doctor's certificate also had been specifically denied and a specific stand was taken that the petitioner never asked for extension of leave as alleged by him and never submitted Doctor's certificate. On the report submitted by the Branch Manager, Nizamabad. Regional Office, Hyderabad by registered post letter with acknowledgment due dated June 2, 1992 addressed the petitioner to his two addresses at Vijayawada stating the Bank has reason to believe that he had no intention to join duties and however he was given further notice of 30 days within which he was expected to resume duties and to state inter alia the grounds for his absence satisfying the management that the petitioner had not taken up any employment avocation and he was further advised that should he fail to resume duties within the stipulated time, he would be deemed to have voluntarily retired from the services of the Bank in terms of the provisions of the Bi-partite Settlement and the communication sent to the two addresses were returned only with endorsements "Addressee left return to sender" and "No such person", respectively and inasmuch as the period of 30 days had come to an end, the Bank came to the conclusion that the petitioner had no intention to join the duty and he is deemed to have voluntarily left the services of the Bank and hence the Bank got published the paper publication in Eenadu Telugu daily on July 30, 1992 regarding the voluntary cessation of employment by the petitioner

from the Bank service and the same was got- published in Vijayawada and Nizamabad District editions and the petitioner was treated as having voluntarily left the services of the Bank with effect from July 30, 1992. It is further stated that whatever the addresses the petitioner had given, the Bank had sent the letters dated April 10, 1992 and June 2, 1992 to those addresses, which had been returned with the endorsements aforesaid and the fact about the change of address was never informed to the Bank as required as per Rules. It is further stated that in the notice dated January 10, 1994, which was got issued by the petitioner through his advocate, it was clearly mentioned that his client vacated the premises at Vijayawada as mentioned in the Bank's communication and shifted to Bapatla and therefore his client did not receive any communication or any letter from the Bank and the said version clearly establishes that he gave addresses at Vijayawada and it is the minimum responsibility and duty of the petitioner to inform the Bank about the change of address from Vijayawada to Bapatla and his silence in this regard clearly shows the intention of the petitioner to ignore the Bank's service conditions.

9. It is also stated in the counter affidavit that on October 7, 1994 the petitioner sent a letter to the Regional Manager, A. P. Regional, Office, Hyderabad requesting to provide a job as sub-staff to his son because of his family position and further requested to settle his P.F. Gratuity up to date and that he cannot come to the Bank to collect the same and the said letter clearly shows that he consented and agreed for the termination of his services from the Bank, which was communicated by paper publication. It is also stated that the amounts payable to the petitioner as requested by him by the letter dated October 7, 1994 had been adjusted towards the loans obtained by him and the same was intimated to the petitioner by the Bank in its letter dated October 20, 1995. It is further stated that the petitioner had absented himself unauthorisedly from the services and hence he does not deserve any consideration except voluntary retirement from the Bank service as per the provisions of the Bipartite Settlement. It was also stated that the so-called letter dated July 30, 1992 is nothing but a sheer concoction. It was further stated that the termination of the petitioner from the service is absolutely proper and bona fide as the Bank followed the procedure prescribed in dealing with the case of the writ petitioner. It was also stated that there are laches on the part of the petitioner and hence he is not entitled to any relief.

10. Though the respective pleadings of the parties are a bit lengthy, the short question that has to be considered in the present Writ Petition is whether the notice published by the Bank relating to the deemed voluntary retirement of the writ petitioner is sustainable or not?

11. Much stress had been laid on the contents of the reply notice dated February 25, 1994 issued by the Bank. The said reply notice reads as follows:

"At the outset my client denies all the allegations made in that notice which are not specifically admitted herein. My client states that they are not aware nor are

they concerned with your client's averments regarding shifting of his house. Your client has failed to inform the Bank about the change of address which is mandatory as per Bank's Rules. There was no leave available to your client to apply for leave nor was the said application for medical leave accompanied by any medical certificate. My client states that even while applying for the said leave your client has not informed the Bank about the change of residence nor his then address. My client denies that your client was suffering from ill-health and jaundice which disabled him from attending to his duties for a period of nearly 8 months. My client has been repeatedly communicating to your client and when there was no response my client was constrained to publish in the newspapers of July 30, 1992 and even after the publication there has been no communication from your client. The very fact that your client has not even bothered to inform his change of address to his employer, namely, the Bank, shows the negligence of your client in performing his duties and obligations. For the first time on March 23, 1993 a letter was received by my client through its Zonal Office in which a reference was made to a letter dated July 30, 1992, the said letter dated July 30, 1992 was not received by my client at any time prior to that. My client instructs me to inform you that the demand made by your client through your notice is absolutely baseless and unjustified and that the termination of service of your client by my client is perfectly justified and in accordance with the Bank's regulations. My client also instructs me to inform you that all the statutory dues can be collected by your client from my client who is ready to settle the account as per rules and regulations. My client also informs me that if in spite of this your client proceeds in any manner indicated by you my client will be constrained to defend themselves holding your client liable for all costs and consequences incidental thereto."

In the said reply notice, the learned counsel for the writ petitioner had pointed out the sentence " There was no leave available to your client to apply for leave nor was the said application for medical leave accompanied by any medical certificate " and contended that the same will clearly indicate that the leave application had been received and hence the Bank is not coming up with the true version. It may be that as the conduct clearly reveals the writ petitioner has not been diligent in attending to his duties and might have made an attempt to send some application or other, but that by itself, in my considered opinion, cannot save the writ petitioner from the action impugned in the present Writ Petition. No doubt several factual aspects had been narrated and controverted. But however, a specific stand was taken by the writ petitioner in the affidavit that he fell sick and applied for leave for 15 days on October 3, 1991. It can be seen from the records produced that on October 3, 1991, the writ petitioner had addressed a letter to the Manager of the bank and the contents of the said letter are as follows:

"I am suffering from dysentery, hence I could not attend the office. So please kindly grant me 2 days leave i. e. October 3, 1991 and October 4, 1991 and oblige. I will submit M.C. at the time of my joining duties. Thanking You. Yours

faithfully."

The contents of the letter, even if taken on their face value, appear to be contrary to the stand taken by the writ petitioner in the affidavit. I am stating this instance only to show that not only the past conduct of the writ petitioner relating to the first instance of his absence for 105 days, but even the subsequent conduct of the writ petitioner in the light of the correspondence available on record, clearly goes to show that the writ petitioner, for the reasons best known, had not been cautious or diligent relating to his service. No doubt, these are all aspects which relate to the conduct of the writ petitioner.

12. The main contention which had been seriously urged by the writ petitioner is that even if this long absence is treated as unauthorized absence, at the best it may amount to only minor misconduct and at any rate, the same cannot result in the impugned action which virtually amounts to termination of, service and much stress was placed on the removal of the said provision by subsequent agreement and hence it was contended that in the light of the same, it is a fit case where the writ petitioner is notified to the relief prayed for in the Writ Petition.

13. I am unable to accept this contention for the reason that the legality or otherwise of the impugned action may have to be judged as per the existing provisions as on the date of the said action and merely because there is some change subsequently, it will not in any way ensure to the benefit of the writ petitioner. Clause XVI of the Fourth Bipartite Settlement, dated September 17, 1984, dealing with Voluntary cessation of employment by the employees reads as follows:

"In supersession of Clause 2 of the Settlement dated September 8, 1983 the following shall apply:

Where an employee has not submitted any application for leave and absents himself from work for a period of 90 or more consecutive days without or beyond any leave to his credit or absents himself for 90 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended or where there is satisfactory evidence that he has taken up employment in India or the management is satisfied that he has no present intention of joining duties, the management may at any time thereafter give a notice to the employee's last known address calling upon the employee to report for duty within 30 days of the notice stating, inter alia, the grounds for the management 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 or unless he gives an explanation for his absence satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the Bank's service on the expiry of the said notice. 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.

In case of an employee who has gone abroad, and has not submitted any application for leave and absents himself for a period of 150 or more consecutive days without or beyond any leave to his credit or absents himself for 150 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended and where the management has reasons to believe that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee's last known address calling upon the employee to report for duty within 30 days of the notice. Unless the employee reports for duty within 30 days or unless he gives an explanation for his absence satisfying the management, the employee will be deemed to have voluntarily retired from the Bank's service on the expiry of the said notice. 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"

The question whether the absence for sufficiently a long time is a major misconduct or minor misconduct and in such circumstances what may be the appropriate punishment, may not be relevant in the present case for the reason that the stand taken by the Bank is that the action had been initiated under the Bipartite Settlement. As already expressed by me, it cannot be said that the rigor of the provision can in any way be reduced by the subsequent taking away of the said provision.

14. In the decision referred 1990-I-LLJ-533 (AP) (supra), the question was dealt with in a slightly different context and it was held as follows:

"The learned counsel for the petitioner wanted to interpret para XVI as requiring the Bank to conclude also that the petitioner had not taken up any other employment or avocation also. In my opinion this is not correct. The rule in para XVI only requires either that the employee reports for duty within 30 days or in the alternative explains and satisfies the Management that he has not taken up another employment or avocation. These two clauses are in the alternative. They need not both be satisfied. It is sufficient if one of them is satisfied, if the petitioner did not report to duty within 30 days, as happened here, it is sufficient for the employer to take action in terms of para XVI of the Bipartite Settlement provided however that the Bank as employer was also satisfied that the petitioner had no intention of joining duties. It is not necessary that the employer should further be satisfied that the employee had taken up employment or avocation elsewhere.

On the fact of the case, the petitioner did not join duty within 30 days of the notice nor did he try to satisfy the Bank that he intended to join duty. Instead, he continued to say, in his reply dated May 1, 1988 that he still believed to be

under deputation and the same is to be confirmed. He did not show any sincerity in joining duty in spite of leave not being granted. He even withdrew his leave applications. Hence the conditions necessary to deem voluntary resignation were satisfied."

In *Syndicate Bank Vs. The General Secretary, Syndicate Bank Staff Association and Another*, where a Bank employee unauthorisedly absented himself for work for a period exceeding the prescribed limit of 90 days and the Bank having served a notice upon him requiring to submit his explanation to join work within the prescribed period of 30 days as otherwise he would be deemed to have retired, was held to be good. In *Punjab and Sind Bank and Others Vs. Sakattar Singh*, while dealing with a similar situation and also the question of non-compliance of principles of natural justice, the Apex Court had observed:

"A reading of Clause XVI of IV Bipartite Settlement will make it clear that in the event an employee absents himself from duty for 90 days or more consecutive days beyond the period of leave originally sanctioned or subsequently extended the Management may at any time thereafter, give a notice to employee at the last known address calling upon him to report for duty within 30 days of notice stating, inter alia, the grounds for the management coming to the conclusion that the employee has no intention of joining duty and furnishing necessary evidence wherever relevant and unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence satisfying the Management that he has not taken up another employment or avocation and he has no intention of not joining the duty, the employee will be deemed to have voluntarily retired from the Bank's service on the expiry of the time fixed in the said notice in the event of the employee giving a satisfactory reply, he will be permitted to report for duty thereafter within 30 days from the expiry of the aforesaid notice without prejudice to the Bank's right to take any action under the law or rules of service. Under this Rule the employee is given an opportunity to rejoin duty within a stipulated time or explain his position to the satisfaction of the Management that he has no intention of not joining duty, and a presumption will be drawn that the employee does not require the job any more and will stand retired from service. Thus, there is no punishment for misconduct but only to notice the realities of the situation resulting from long absence of an employee from work with no satisfactory explanation thereto. The principles of natural justice cannot be examined in vacuum without reference to the fact situation arising in the case. This Rule has been incorporated in an agreement where representatives of employees unions were parties. They also realized the futility of continuing a situation when an employee without appropriate intimation to the management is playing truant."

15. It is no doubt true that in the present matter, the stand taken by the writ petitioner is that the impugned action had been taken by way of victimization in view of the Union-activities. Apart from this, it was also stated that there was no service of notice and despite the fact that there was communication from his

side, the management of the Bank had intentionally thrown him out. I am unable to accept these contentions since these are all general allegations. The specific stand taken by the Bank is that in fact when there was absence for 105 days, sympathetic view was taken and despite the same the petitioner was not regular in attending to his duties. I am thoroughly satisfied that the conduct of the writ petitioner ; clearly reveals that the writ petitioner was not duty conscious. May be that in all such cases, such employees may not be thrown out of service and certain minor punishments also can be awarded depending upon the facts and circumstances of the case and it is within the discretion of the concerned Management. Here is a case where communications were sent by the Bank to the addresses available and it is not the fault on the part of the Bank that the same had not been received at other end and that cannot be taken as an advantage and on that ground it cannot be contended by the writ petitioner that the impugned action as such is illegal. It is needless to say that the Bipartite Agreement is binding and the alleged non-service of notice raised in this matter by the writ petitioner can be taken to have happened only because of the fault of the writ petitioner and hence the several allegations made by the writ petitioner relating to the alleged victimisation cannot be believed in the facts and circumstances of the case. When the Bank had exercised a particular mode by invoking the provisions of the Bipartite Agreement which is binding, the legality or illegality of the said action alone may have to be looked into and the other probable penalties need not be considered by the Court.

16. In the light of the foregoing discussion, the Writ Petition is devoid of merits and accordingly the same is dismissed. No order as to costs.