
(2010) 02 P&H CK 0119
In the Punjab And Haryana At Chandigarh

Jaswinder Singh

APPELLANT

Vs

The Regional Manager, Punjab National Bank and Another

RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G, 25H

Citation : (2010) 125 FLR 813 : (2010) 3 LLJ 702 : (2010) 158 PLR 9

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—The challenge in the present petition is to the Award dated 27.05.2008 (Annexure-P-10), passed by the learned Industrial Tribunal-cum-Labour Court-II, Chandigarh, vide which the reference made on a dispute raised by the petitioner/workman (for short "the Workman") stands answered against him, holding therein that the Workman is not entitled to any relief.

2. Counsel for the Workman contends that the Workman was appointed as a Clerk-cum-Cashier and joined as such with the respondent/Management (for short "the Management") on 22.02.1986. He proceeded on leave to Lucknow with permission with effect from 24.08.1995, but fell ill, so he requested for extension of leave upto 20.09.1995. His illness prolonged, so he sought further extension of leave upto 12.06.1996 and so on. No reply was received by the Workman from the Management on his application for grant of leave and, therefore, he presumed that the leave had been granted by the Management. However, on 12.01.1996, he received a telegram intimating him that he was absenting unauthorisedly and he should resume duty immediately.

3. He responded by way of filing reply and explaining his absence from duty because of medical ground and ultimately he had been retired voluntarily from service of the Management with effect from 03.05.1996 as per paragraph 17(a) of the Fifth Bipartite Settlement. He contends that the termination of services of

the Workman is illegal as no chargesheet, inquiry or show cause notice was issued nor had the provisions as contained under Sections 25F, 25G, and 25H of the Industrial Disputes Act, 1947, (for short "the Act") been complied with. He on this basis submits that the Award dated 27.05.2008 (Annexure-P-10), passed by the learned Industrial Tribunal-cum-Labour Court, Chandigarh, deserves to be set aside and the Workman be reinstated in service with all consequential benefits.

4. I have heard counsel for the Workman and have gone through the records of the case.

5. The Workman was a Bank employee and, therefore, his service conditions are covered by Bipartite Settlement, which has been entered into between the Bank Management and Union under the Act. Para 17(a) of the 5th Bipartite Settlement dated 10.04.1989 provides for voluntarily cessation of employment by the employer and the same reads as follow:

When an employee absents himself from work for a period of 980 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 where there is 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 30 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 up another employment or avocation and 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 expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.

6. The Workman remained unauthorisedly absent from Bank duty with effect from 24.08.1995 till 03.05.1996, when he was, as per abovementioned paragraph 17(a) of the 5th Bipartite Settlement, treated to have voluntarily retired from service. A perusal of the records shows that after initial sanction of leave, application for extension of leave with effect from 31.08.1995 to 20.09.1995 was received from the petitioner, but the same was not sanctioned and vide telegram dated 21.09.1995, he was informed that his absence from duty was not authorised and he was advised to resume duty immediately. Thereafter, various letters were sent to the petitioner/Workman. Letters dated 31.10.1995, 23.11.1995, 22.12.1995, 12.01.1996, and 03.04.1996 sent by the Management, was admitted by the petitioner/Workman in his statement before

the Tribunal to have been received. In these letters, he had been duly informed that his leave has not been accepted and he is being treated to be absent from duty unauthorisedly and was directed to resume duty immediately. When the petitioner/Workman failed to resume his duty, vide letter dated 03.05.1996, the Workman was conveyed that he has been treated to be retired voluntarily in the light of paragraph 17(a) of the 5th Bipartite Settlement dated 10.04.1989. It would not be out of way to mention here that all through from July, 1995, till 03.05.1996, the Workman had only submitted one medical certificate dated 31.08.1995, vide which he was advised rest for three weeks. During the proceedings before the Labour Court also, the Workman had not been able to produce any documentary evidence in support of his illness, which would have rendered him incapable of joining duty.

7. What has been asserted by the Management is that the Workman had, as a matter of fact, gone abroad and taken up some assignment, but the Management could not by positive evidence, prove the same. However, the Workman in his statement before the Labour Court, admitted the fact that he had obtained his passport after getting "No Objection Certificate" from the Bank. He, when asked to produce the passport, claimed that the same has been lost and an F.I.R. was lodged by him in this regard. Upon time having been granted to him for production of copy of the F.I.R., the Workman could not produce any such F.I.R. nor could he submit any explanation. The Management had, however, been able to prove from the evidence of Munishwar Bajaj, Manager, who appeared as a witness of the Management and stated that he had gone to the house of the Workman to serve the letter of the Management on him, but he was informed by the neighbours that he had gone abroad. Same was the position with regard to a messenger sent by the Bank for effecting service on the Workman at his residential address. All this shows that the Workman had remained absent from duty.

8. Had the Workman been able to prove before the Labour Court by way of furnishing evidence that his absence was for the reasons beyond his control, some benefit could have been given to the Workman. In the absence of any evidence being on record either in the form of medical evidence or any other circumstances, no indulgence can be granted to the Workman. From the records, it is apparent that the Workman had received the notices, which the Management had served upon him, but he failed to resume his duties. In the absence of any evidence, which would suggest some reasons, which were beyond his control, leading to his absence from duty and also that he had not taken any other employment or avocation and he had all intentions to join duty, order dated 03.05.1996, passed by the Management is in accordance with paragraph 17(a) of the 5th Bipartite Settlement dated 10.04.1989.

9. That being so, the findings as recorded by the Labour Court after due consideration of the evidence led by the parties and taking into consideration the provisions of 5th Bipartite Settlement dated 10.06.1989 is in accordance with

law. No illegality has been committed by the Court below, therefore, no interference is called for by this Court in exercise of its writ jurisdiction.

10. Finding no merit in the present writ petition, the same stands dismissed.