
(2009) 10 AP CK 0032

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1002 of 2001

Mada Lokeswara Prasad

APPELLANT

Vs

UCO Bank

RESPONDENT

Date of Decision : 26-10-2009

Acts Referred:

Citation : (2010) 1 ALT 71 : (2010) 126 FLR 345 : (2010) 5 SLR 79

Hon'ble Judges : Anil R. Dave, C.J.; C.V. Nagarjuna Reddy, J

Bench : Division Bench

Advocate : V. Venkataramana, for the Appellant; V. Ajaya Kumar, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—Feeling aggrieved by order dated 26.04.2001 in WP. No. 15146 of 1991, whereby the learned Single Judge dismissed the writ petition, the writ petitioner filed the present writ appeal.

2. The facts leading to the filing of this writ appeal are summarized hereunder:

The appellant joined the respondent, which is a nationalized Bank, as Clerk-Steno-Typist in the year 1980. The appellant applied for leave, which was sanctioned up to 30.01.1991. As the appellant failed to resume his duty, the respondent issued notices to him to report for duty. As the earlier notices did not yield any result, the respondent sent notice dated 09.03.1991 and a further reminder on 01.04.1991 requiring the appellant to report for duty. As those notices were returned undelivered, they were displayed on the notice board of the respondent's Divisional Office at Hyderabad. The respondent continued its efforts to impress upon the appellant to resume his duty by sending another notice dated 02.05.1991. The last paragraph of the said letter being pivotal to the dispute involved in this case is apt to be reproduced hereunder:

It is noted that you have been absenting from duty since 31.01.1991 continuously for more than 90 days. You are hereby called upon to report to this

office for duty within 30 days of this notice or explain satisfactorily with evidence that you have not taken employment or vocation elsewhere and that you have no intention of not joining the Bank's service, failing which it will be deemed that you have voluntarily ceased from Bank's service.

3. The appellant received the said letter and responded to the same vide his letter dated 18.05.1991, wherein he pointed out that as his house number was wrongly mentioned as 10-1-529/1 instead of 10-1-629/1, the delay occurred in his receiving the said letter. The appellant stated in the said letter that he posted letters dated 01.02.1991 and 01.04.1991 requesting for sanction of sick leave for two months from 30.01.1991 and also for extension of sick leave for another two months, as he was not keeping good health. He also stated that he was enclosing xerox copies of medical certificates, which were enclosed to the abovementioned leave applications and requested the respondent not to treat his leave as unauthorized absence. He promised that he should report for duty soon after his recovering from illness. On receipt of the said letter from the appellant, the Divisional Manager of the respondent Bank issued notice dated 22.06.1991. In the said notice it was mentioned that in continuation of the respondent's earlier letters they have sent letter dated 02.05.1991 bringing to the appellant's notice his unauthorized absence from duty for more than 90 days and informing him that he shall be deemed to have voluntarily vacated his post and shall cease to be in Bank's service. While mentioning that the appellant's leave record was highly irregular/unsatisfactory, as he was habitual in unauthorizedly absenting himself from duty frequently for long periods without submitting leave applications and obtaining prior sanction, the respondent stated that none of the appellant's alleged leave applications were received by it. The appellant was once again called upon to report to duty within 30 days from the date of receipt of the said letter and provide necessary evidence and satisfactory explanation for his unauthorized absence failing which the respondent shall be compelled to take further action in terms of para 17 of the 5th Bipartite Settlement (for short, "the Settlement").

4. The appellant received the said notice dated 22.06.1991 on 06.07.1991 and neither reported to duty nor gave any explanation for his unauthorized absence. Therefore, the respondent was constrained to issue another notice to the appellant in terms of para 17 of the Settlement by terming the same as a final notice to report to duty within 30 days from the date of receipt of the said letter, failing which the respondent would proceed further in terms of the said Settlement. The said notice was returned to the respondent undelivered with the remark "addressee absent". The respondent therefore published notice dated 14.10.1991 in the local Telugu daily "Udayam". As the appellant has not reported to duty even thereafter, the respondent issued proceedings dated 14.11.1991 treating the appellant as having voluntarily vacated his office and striking of his name from the Bank's rolls with effect from 14.11.1991. It is this order, which was the subject matter of challenge in WP. No. 15146 of 1991, which, as mentioned above, was dismissed by the learned Single Judge.

5. At the hearing, Sri Vedula Venkataramana, learned counsel for the appellant, argued that as para 17 of the Settlement has the result of termination of the services of an employee even without an enquiry, the said Clause requires to be construed strictly and that so construed, it should be held that the respondent failed to comply with the requirements of the said clause, thereby vitiating the order passed by the respondent. The learned counsel further argued that to bring about the situation of voluntary cessation, the foundational requirement of notice stating the grounds for coming to the conclusion that the employee has no intention of joining duty shall be satisfied and that notice dated 18.09.1991, which was the basis for proceedings dated 14.11.1991 terminating the appellant's service, did not satisfy such requirement. He further contended that the learned Single Judge completely misconstrued para 17 by holding that only if the appellant's case falls under second limb of para 17(a) of the Settlement, recording of reasons by the management for coming to the conclusion that the employee has no intention of joining duty would be necessary.

6. Sri V. Ajay Kumar, learned counsel for the respondent, sought to justify the order impugned in the writ petition and the reasoning of the learned Single Judge while repelling the challenge to the impugned order in the writ petition.

7. In order to resolve the controversy, let us first analyze para 17 of the Settlement. As the learned Single Judge has reproduced the Clause in his judgment, it is not necessary to extract the same once over. The said Clause envisages that if an employee absents himself from work for a period of 90 or more consecutive days or without any leave to his credit or beyond the period of leave sanctioned originally or 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 after the expiry of 90 days give a notice to the employee at his last known address. In the notice the employee will be called upon him to report to duty within 30 days of the date of the notice, stating inter alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence wherever the same is available. This Clause enables the employer to declare that the employee is deemed to have voluntarily retired from the Bank's service on expiry of the notice period, if the employee fails to report for duty within the notice period or gives a satisfactory explanation for his absence within the said period of 30 days. It further provides that 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 notice without prejudice to the Bank's right to take an action under the law or rules of service. It is clear from this Clause that when the employer chooses to issue a notice for the employee's unauthorized absence beyond 90 days, irrespective of whether his case falls in any one of the contingencies envisaged in Clause 17(a), it is incumbent upon the employer to state in the notice the grounds for coming to the conclusion that the employee has no intention of joining duties and also to furnish necessary evidence wherever such evidence is available.

8. If we examine the order of the learned Single Judge from this perspective, we may not be able to agree with his reasoning that the requirement of stating the grounds for the employer's conclusion on the employee's intention not to join his duties will arise only when there is a satisfactory evidence that the employee has taken up employment anywhere in India. But, our disagreement with this reasoning of the learned Single Judge does not end the controversy. The further question that arises for consideration, is whether the notices issued by the respondent satisfy the ingredients of para 17 of the Settlement in order to bring about the appellant's termination on the ground of cessation of office in conformity with the said Clause of the Settlement.

9. It is not in dispute that the leave sanctioned to the appellant expired on 30.01.1991. It appears that some of the earlier notices were returned without being served on the appellant. However, the appellant received notice dated 02.05.1991. In the said notice, the relevant part of which was reproduced supra, the respondent narrated the material facts pertaining to the unauthorized absence of the appellant while referring to the earlier notices. The respondent also called upon the appellant to report for duty within 30 days of the notice or explain satisfactorily with evidence that he has not taken up employment or vocation elsewhere and that he has no intention of not joining the Bank's service. In short, the said notice satisfies the twin requirements postulated in para 17 of the Settlement, namely, calling upon the appellant to report for duty within 30 days of the notice and also stating inter alia the grounds for coming to the conclusion that the employee has no intention of joining duties. The additional requirement of furnishing necessary evidence in support of the said conclusion is also satisfied by making a reference in the notice to the factum of the appellant's failure to join duty even after expiry of the leave period and in spite of several earlier notices and reminders given by the respondent calling upon the appellant to join duty.

10. While conceding that notice dated 02-5-1991 conforms to the requirements of para 17 of the Settlement, the learned counsel for the appellant, however, submitted that by issuing further notices dated 22.06.1991 and 18.09.1991, the respondent is deemed to have waived notice dated 02.05.1991. We find this contention as wholly misplaced and misconceived.

11. A proper analysis of the correspondence referred to above goes to show that notices dated 02.05.1991, 22.06.1991 and 18.09.1991 constitute a continuous chain of events and the later notices are only in addition to and not in derogation of the initial notice dated 02.05.1991. This view of ours derives support from the very opening part of notice dated 22.06.1991, which referred to notice dated 02.05.1991 and the earlier notices sent in continuation of which the said notice dated 02.05.1991 was sent. Similarly, notice dated 18.09.1991 also referred to the notice dated 22.06.1991. All these notices are therefore required to be read in conjunction and not in isolation.

12. It is not the pleaded case of the appellant that either he reported for duty

after 02.05.1991 or that the respondent has issued any proceedings condoning the act of the appellant in not joining duty after expiry of leave. Though it would have been open to the respondent to pass order declaring that the appellant ceased to hold office, on the expiry of 30 days from the date of service of notice dated 02.05.1991 on the appellant, the respondent evidently wanted to give further opportunities to the appellant to report for duty. This gesture on the part of the respondent cannot be treated, as its conscience waiver of notice dated 02.05.1991.

13. The intendment of para 17 of the Settlement is obviously to enforce discipline on the employees and to prevent long and continuous absence from work beyond the sanctioned leave period by the employees. Clauses similar to para 17 of the Settlement fell for consideration of the Apex Court in more than one case.

14. In Punjab and Sind Bank and Ors. v. Sakattar Singh (2001)1 SCC 214 the Supreme Court held that under Clause 16 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 that under the said Clause a presumption will be drawn that the employee does not require the job any more and will stand retired from service. It was further held that under the said Clause no punishment for misconduct was involved, but such a Clause was incorporated on noticing the realities of the situation resulting from long absence of employees from work with no satisfactory explanation thereto. The Supreme Court also held that all the employees' unions were parties to the settlement, which was arrived at on realizing the futility of continuing with a situation when an employee without appropriate intimation to the management is playing truant.

15. In Syndicate Bank Vs. The General Secretary, Syndicate Bank Staff Association and Another, the Supreme Court restated the requirements of principles of natural justice to be observed while invoking a Clause of similar nature and held that the requirements in this regard are three fold, namely; (i) a workman should know the nature of the complaint or accusation (ii) an opportunity to state his case and (iii) the management should act in good faith which means that the action of the management should be fair, reasonable and just.

16. In Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others, the Apex Court held that principles of natural justice cannot be put in a straitjacket formula and applied in a vacuum without reference to the relevant fact and circumstances of the case. The Supreme Court reiterated the oft repeated dictum that the principle of natural justice is no unruly horse and that when facts are admitted, an enquiry would be an empty formality. In that case, by invoking clause, which was ipsissima verba with para 17 of the Settlement in the instant case, the workman was informed by the Branch Manager of the Bank concerned that the former should rejoin his duties after expiry of leave. As the workman failed to report for duty, memo dated 02.11.1983 was issued by the Bank to the

workman calling upon him to show cause as to why he had been on unauthorized leave for long periods. The workman was also asked to join duty. Despite service of the said memo, the workman failed to join his duties by 31.12.1983. Therefore, a show cause notice was issued on 31.12.1983, whereby the workman was intimated that in the event of his failure "to resume his duties by 15.01.1984, he would be deemed to have been discharged from the services of the Bank. On receipt of the said notice, a telegram was received from a person by name Krishan Chand Sethi stating that the workman being unwell could not join his duties by 15.01.1984. The workman again applied for grant of leave on medical grounds on 15.02.1984. The Bank thereupon issued a memo holding that the workman was deemed to have voluntarily retired from the service with effect from 08.02.1984.

17. While rejecting the contention advanced on behalf of the workman that the Bank did not give sufficient opportunity to the workman before terminating his services, the Supreme Court held:

The fact that there exists a bipartite settlement entered into by and between the banks and their workmen is not in dispute. The workman was all along aware about the said legal position inasmuch as, at all stages, viz., issuance of notices and memorandums, passing of the order of termination, the said settlement had been referred to.

What fell for consideration before the Industrial Tribunal was the interpretation and/or applicability of the said Settlement. The Industrial Tribunal committed an error of record insofar as it proceeded on the basis that the said Settlement had not been proved. The Settlement being an admitted document should have been considered in its proper perspective by the Industrial Tribunal. Clause (2) of the said Settlement is a complete code by itself. It lays down a complete machinery as to how and in what manner the employer can arrive at a satisfaction that the workman has no intention to join his duties. A bare perusal of the said Settlement clearly shows that it is for the employee concerned to submit a proper application for leave. It is not in dispute that after the period of leave came to an end in June 1983, the workman did not report back for duties. He also did not submit any application for grant of further leave on medical ground or otherwise. It is in that situation the memorandum dated 2.11.1983 was issued and he was asked to join his duties. It is further more not in dispute that despite receipt of the said memorandum, the workman did not join duties pursuant where to he was served with a notice to show cause dated 31.12.1983, He was required to resume his duties by 15.1.1984. The bank received a telegram on 17.1.1984 and only about a month thereafter he filed an application for grant of leave on medical ground. It is not the case of the workman that any leave on medical ground or otherwise was due to him. Opportunities after opportunities indisputably had been granted to the workman to explain his position but he chose not to do so except filing applications for grant of medical leave and that too without: annexing proper medical certificates.

The Bipartite Settlement is clear and unambiguous. It should be given a literal meaning. A bare perusal of the said Settlement would show that on receipt of a notice contemplated thereunder, the workman must either: (1) report for duties within thirty-days; (2) give his explanation for his absence satisfying the management that he has not taken any employment or avocation; and (3) show that he has no intention of not joining the duties. It is, thus, only when the workman concerned does not join his duties within thirty days or fails to file a satisfactory explanation, as referred to hereinbefore, the legal fiction shall come into force. In the instant case except for asking for grant of medical leave, he did not submit any explanation for his absence satisfying the management that he has not taken up any other employment or avocation and that he had no intention of not joining his duties.

18. In our considered view, the instant case stands almost similar to the case in *Vivekanand Sethi* (3 supra). The appellant was very well made known the reason for initiating action against him by the respondent. Being an employee of the Bank, he cannot feign ignorance of para 17 of the Settlement and its contents. While the contents of para 17 were specifically referred to in notice dated 02.05.1991, in notices dated 22.06.1991 and 18.09.1991 a reference to this Clause was also made. Thus, the impugned action of the respondent is well in conformity with para 17 of the Settlement. The conduct of the appellant clearly reveals that he never wanted to join duty after expiry of leave and despite receipt of umpteen number of notices.

19. Having regard to the undisputed facts of this case discussed above, we are of the firm opinion that the respondent has not committed any illegality or violation of principles of natural justice in declaring that the appellant ceased to hold office in terms of para 17 of the Settlement.

20. For the abovementioned reasons, the writ appeal fails and is accordingly dismissed.