

(2001) 09 RAJ CK 0097

In the Rajasthan High Court

Case No : .C.S.A. No. 59 of 1996 & Civil Special Appeal No. 59 of 1996

Marwar Gramin Bank and Another

APPELLANT

Vs

Suresh Chandra Joshi and Others

RESPONDENT

Date of Decision : 27-09-2001

Acts Referred:

Marwar Gramin Bank Staff Service Rules, 1980 — Regulation 10

Citation : (2002) 4 RLW 2072 : (2002) 4 WLC 584 : (2002) 4 WLN 170

Hon'ble Judges : Sunil Kumar Garg, J;Rajesh Balia, J

Bench : Division Bench

Advocate : M.D. Purohit, assisted by Rakesh Kalla, for the Appellant; L.R. Calla, for the Respondent

Judgement

Balia, J.—Heard learned counsel for the parties.

2. The facts in brief are that the respondent-petitioner was in the service of the appellant Bank since he joined in pursuance of appointment letter dated 15th Jan., 1981 was issued to him. On 14.6.82, the said incumbent submitted the letter of resignation informing the appellant that he has been selected by the Life Insurance Corporation as a Development Officer so he is resigning from the service of the Bank with immediate effect. As a parting pleasantries, he also made a request that in case he is not satisfied with his new job he may be given a new appointment. Thereafter, the petitioner joined the services of the Life Insurance Corporation on 16.6.82. The petitioner-respondent received a letter dated 10.6.83 (Ex.7) from the Bank stating that his resignation dated 14.6.82 has not been accepted by the employer and, therefore, he is being treated as absent from duty since 14.6.82. He was called upon the report on duty with a stipulation that failing which disciplinary proceedings will be initiated against him. In response to said letter the respondent- petitioner presented himself for joining duty and he was allowed to join duty on 17th June, 1983. Before rejoining the service the petitioner resigned from the services of LIC vide his letter dated 16.6.83 (Ex.8).

3. After the petitioner joined the services of the Bank again, he was served with a charge-sheet (Ex.10). The five charges levelled against the petitioner-respondent were; (1) that the petitioner without consent of the Bank resigned from the services and joined the services of LIC w.e.f. 16.6.82 contrary to the terms of the agreement, (2) that the petitioner remained unauthorisedly absent from duty from 14.6.82 to 16.6.83, (3) that the petitioner has taken a loan from the Bank and the date on which he has submitted his resignation a sum of Rs. 2113.50 was due which became payable in one installment in case of resignation but the same has not been paid, (4) that the petitioner has not made available to the Bank his new address and because of that the letters earlier sent to the petitioner were returned unserved, and (5) that the petitioner has given his services to the LIC from 16.6.82 to 13.6.83 without consent of the Bank. For the aforesaid misconducts, an enquiry was instituted. After submitting the reply and holding of an enquiry, the services of the petitioner from the Bank were terminated by order dated 11.04.84 in the following terms:-

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3- buds izR;qRrj ij fopkj djus ds i"pkr~ eSus vius vkns"k ?ekad ch ,.M vkbZ@lh@638 fnukad 18-11-1+983 ds }kjk Jh jkes"oj yky thuxj dks ekjokM+ xzkeh.k cSad LVkQ Isok fofu;e 1980 ds fofu;e 30 ds vUrxZr Jh tks"kh ds fo:) tkap djus gsrq tkap izkf/kdkjh fu;qDr fd;k A

4- tkap vf/kdkjh us vkjksi i= esa yxk;s x;s vkjksiksa dh tkap dj viuk tkap izfrosnu o fu"d"kZ eq>s 6 viSy] 1984 dks izLrqr dj fn;k gS A tkap vf/kdkjh ds izfrosnu ds vuqlkj IHkh IHkh vkjksi fl) gksrs gSa A tkap vf/kdkjh ds fu"d"kZ dh ,d izfr vkns"k ds lFk layXu gS A

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4. By holding all the charges as proved, the appellant was dismissed from service. The appeal against the order of dismissal was also dismissed vide communication dated 11.6.84 (Ex.23) which reads as under: -

Appeal against Order No. V&I/C/420 dated 11.4.84.

With reference to your appeal on the subject received by us on the 16th May, 1984, we have to advise that the same was placed for consideration to the Bank's Board of Directors, in its meeting held on 4th July, 1984 & decision on it was taken as under:-

"The appeal was considered and it was decided that the punishment awarded to Shri Joshi by the Disciplinary Authority be upheld."

5. These orders of imposing punishment by way of terminating the services of the petitioner were made subject matter of S.B. Civil Writ Petition No. 2742/84.

6. The learned Single Judge vide his order dated 15th Dec., 1994, referring to Regulation 10 of the Bank, governing service conditions, found that under Regulation 10(1)(c) an employee is required to pay the Bank as compensation a sum equal to his emoluments for the period of notice if the required notice is not served on the bank before resigning from the bank services. Therefore, the only consequences of the resignation without serving notice of required period is that the person leaving the service is required to compensate the bank for the emoluments of the notice period and, therefore, it does not amount by itself a misconduct and render the resignation ineffective on reaching this conclusion coupled with that in the absence of any provision for acceptance of resignation by the employer a precondition for its becoming effective the resignation became operative immediately, it followed that no foundation remain to sustain the alleged charges of misconduct No. 1, 2,4 and 5, therefore, no punishment could be imposed on those counts. Once, the resignation becomes effective with effect from the date resignation is offered or is tendered, there could be no impediment thereafter to join other services because the employer-employee relation came to an end.

7. Regulation 21 which prohibits taking outside employment without previous sanction of the competent authority also do not come into operation, when the incumbent leaves service and thereafter joins other service. Obviously, when the services of the petitioner came to end with effect from the date he resigned; namely, 14.6.83, it can render him liable only for the consequences for failure to give requisite notice viz. reimbursing the employer with one month's emoluments for the period of notice.

8. The employer-employee relations having come to an end, the question of remaining absent from duty without leave or without approval from the appointment authority also does not arise once the incumbent resigns for the period after the date with effect from which the resignation was intended to be effective. Because the Petitioner has rejoined only in pursuance of the notice from the Bank dated 10.6.83, would not render his position worse for the period during which he was not in the employment of the Bank and he cannot be punished for the services rendered by him to LIC or for remaining absent from the Bank during the period he was not in the employment of the Bank namely from 14.6.82 to 16.6.83. The learned Single Judge also found that non-payment of the outstanding due in one installment also does not amount to a misconduct, for enforcement of such right a civil suit could be filed but would not result in departmental enquiry for punishing the employee. With these findings, the petition was allowed with costs directing the appellant-respondent Bank to reinstate the Petitioner with back wages and all consequential benefits.

9. Learned counsel for the appellants has vehemently urged that since under the terms of employment petitioner was prohibited from taking another employment while in service and he has taken the job with LIC on 14.6.82 without prior sanction of the employer, it was a serious misconduct and he also urged that since the resignation was never accepted by the Bank it would be deemed that petitioner continued to be in the service of the Bank and since he has not discharged his services from 14.6.82 until he rejoined the duty on 17.6.83 he was rightly held to be unauthorisedly absent from duty.

10. Having bestowed our anxious consideration, we are of the opinion that this contention cannot be sustained. The law is trite that unless otherwise provided under the rules and terms and conditions of the employment, a contract of employment is not liable to be specifically performed. A breach of condition for not serving for any specified period, can at best give a claim to damages but not a ground for initiating departmental enquiry for leaving the job without notice or for shorter period of notice. Law is also trite that in the absence of any term to the contrary or any rule to the contrary, a resignation become effective when it is tendered or with effect from the date notified in the resignation letter, as the intended date with effect from which the resignation is to become operative. There is a regulation governing resignation by the employees of the Bank which is Regulation 10 and has been referred to by the learned Single Judge in his judgment. It reads as under:-

10.(1) (a) An officer or employee shall not leave or discontinue his service in the Bank without first giving notice in writing to the Chairman of the Bank of his intention to leave or discontinue the service.

(b) The period of notice required shall be: (i) Three months in the case of Officers, and (ii) One month in the case of other employees.

(c) In case of breach by an employee of the provisions of this sub-regulation, he

shall be liable to pay the bank as compensation a sum equal to his emoluments for the period of notice required of him.

(d) He shall also be liable to refund the pay or allowances or both, if any drawn by him while on training and make good the training expenses, incurred by the Bank or sponsor bank for deputing him for training.

(e) In exceptional circumstances the payment of such compensation and refund may be waived by the Chairman, at his discretion."

11. The perusal of the aforesaid regulation makes it abundantly clear that the operation of resignation does not depend upon acceptance of the resignation letter by the employer. On the other hand, it merely provides the requisite period of which notice is to be furnished by the employee who intends to resign from the service of the Bank, and also provides the consequences in case the notice of requisite period is not furnished by the employee concerned to the bank. The only consequences provided under the under Regulation 10 are that in case of breach by an employee of the provisions of Sub-regulation (b) of Regulation 10, he shall be liable to pay the bank as compensation a sum equal to his emoluments for the period of notice required of him and that he may also be made liable to refund the pay or allowances or both, if any, drawn by him while on training and make good the training expenses incurred by the Bank or sponsor Bank for deputing him for training. However, it does not speak anything about the effect on the operation of resignation which is of shorter duration nor does it tell anything about keeping its operation in abeyance once it is tendered. No requirement of its acceptance, before it may become operative, is envisaged. In that view of the matter, the irresistible conclusion is that when the respondent-petitioner submitted his letter resigning from the bank service with immediate effect on 14.6.82, the employer-employee relations between the Bank and the respondent came to an end at that moment, though the petitioner rendered himself liable to recompensate the bank with a sum equal to his emoluments for the period of notice required of him and also refund the pay and allowances or both, if any, drawn by him while on training and make good the training expenses incurred by the Bank or sponsoring bank for deputing him on his training in terms of Clauses (c) & (d) of Regulation 10. It may further be noticed that in Clause (e) of Regulation 10 power has been given to the Chairman, it is his discretion to waive such compensation and refund. No such claim has been laid by the Bank.

12. Thus, on 14.6.82 when the employer-employee relationship came to an end by submitting a resignation about which there is no dispute and the petitioner joined the duty with LIC thereafter w.e.f. 16.6.82 as is apparent from Charge No. 1 of the Memorandum of Charges served on the petitioner, there was no occasion for the petitioner to seek permission from the Bank before joining the services of LIC as per the condition of employment because on 16.6.82 he was not in the employment of the bank. His future course after resignation did not depend on the discretion of Bank in any field. That being the position, this conclusion of the

learned Single Judge also cannot be faulted with.

13. Once this conclusion is reached that employer-employee relationship came to an end on 14.6.82 on submission of resignation with immediate effect, the question of remaining unauthorisedly absent from duty from 14.6.1982 would not arise until he was called upon to join duty vide letter dated 10.6.83 within the period stated therein. Therefore, there was no foundation for levelling the charge that the petitioner remained absent unauthorisedly from 14.6.82 to 16.6.83. The basic fallacy in the memo of charges is that the Bank has assumed that the petitioner remained to be in its continuous employment from the date of his initial appointment and has not taken note of the resignation submitted on 14.6.82 was not dependent on its acceptance by the Bank. Once it is held that the letter of resignation dated 14.6.82 became effective on 14.6.82, all the charges of misconduct do not stand further scrutiny and the judgment under appeal, in our opinion, suffers from no infirmity to call for interference.

14. About the charges relating to the amount due at the time of leaving of the service also, we agree with the conclusion reached by the learned Single Judge that it cannot be a misconduct, it may be a ground for recovering the amount immediately if it was otherwise repayable in installment, by due process of law and that liability would not otherwise come to an end had the petitioner continued in service. So also, the allegation that the respondent had not left his future address with the Bank after leaving service cannot be said to be a misconduct for the purpose of punishing the petitioner for that reason.

15. Learned counsel for the appellants has placed reliance on the decisions of Supreme Court in *K.L. Tripathi v. State Bank of India* (1) and *Syndicate Bank v. General Secretary, Syndicate Bank Staff Association* (2). Having considered those decisions, we are of the opinion that both the decisions relied on by the learned counsel have no bearing on the controversy that has been raised before us. It is not a case, in our opinion, where the petitioner has acted in contravention of the rules while he was in service of the Bank. The charges relate to the conduct of the petitioner subsequent to leaving the service of the Bank and before he was asked to join the Bank and in pursuance of which he joined the Bank services again. In view of the clear effect of the resignation when the petitioner was not in the employment of the bank during the period which the alleged misconduct is committed, the very foundation of charges was non-existent. Therefore, the question of fairness of enquiry or procedural flaws, in our opinion, are not the questions for consideration. Those considerations would become germane if during the continuance of the employment there is a breach of the regulations governing service conditions affecting the conduct of the incumbent. Both the cases relied on by the learned counsel are cases where the incumbent has been subjected to departmental enquiry in respect of conduct, commission of which is alleged to have been committed while he was in service of the Bank.

16. Learned counsel has also referred to a decision in *Aligarh Muslim University v. Mansoor Ali Khan* (3). We are of the opinion that the said decision too is of

little assistance to the appellants. It was a case in which the incumbent had taken a job abroad after seeking leave from the University for specified period and thereafter he requested the University for extension of the period for serving outside the country. That prayer was refused by refusing to grant extraordinary leave. Thereafter, since the petitioner had failed to join the service for a period of six months, his services were terminated by considering it to be a case of resignation in terms of Regulation 10 (c)(i) of the Aligarh Muslim university Non-Teaching Employees (Terms and Conditions of Service) Rules, 1972. It is in this context, the Supreme Court has said firstly that since maximum leave permissible under the Rules including ordinary and extraordinary leave was five years, Rule (10)(c)(ii) shall be applicable in cases of absence beyond five years and not in cases of findings of absence for six months as has been held by the University and thereafter by considering the case on merit, the Court held that discretion to refuse leave of any kind available under the rules should be exercised reasonably and on the facts the University did exercised the discretion reasonably. Thus, it was a case in which the petitioner has not rejoined duty after refusal of application for extraordinary leave and consequently disciplinary proceedings were taken against the incumbent. The incumbent was continuing in the employment of the University, when the incumbent had applied for leave and the leave was refused by the University. The disciplinary proceedings were taken against the employee of the University who has failed to join duty even after leave was refused. Here, we are concerned with a case where resignation was submitted by the employee, which did not require acceptance by the employer and it became effective as soon as it was tendered. In view thereof, the decision in Aligarh Muslim University case also does not assist the appellant's case.

17. Lastly, it was contended by the learned counsel for the appellants that the petitioner ought not to have been allowed the backwages while allowing the writ petition by the learned Single Judge because he has not actually discharged the duty during the period the termination order remained effective. It is true that when the disciplinary proceedings resulting in termination of the service are ultimately held to be invalid and quashed resulting in reinstatement of the incumbent, it must be deemed as if the order was never passed and the service continues and in ordinary circumstances incumbent on reinstatement would be entitled to all the consequential benefits including the arrears of his emoluments for the period during which he has been made to remain out of employment because of unlawful act of the employer.

18. At the same time, it is also a relevant consideration that during this period the incumbent does not discharge duty for the employer concerned and if the period is sufficient long, it can be assumed reasonably that the incumbent must have taken some other alternative means for his livelihood. Balancing these two aspects, we deem it proper to modify the order passed by the learned Single Judge to the extent the appellants were directed to pay full backwages with effect from order of termination dated 18.11.83 until reinstatement, within three months of the date of this order by restricting the amount of backwages to 50%

of the emoluments that would become due to the petitioner had he continued in the service of the appellant but for the order of termination passed by the appellant. The services of the petitioner w.e.f. 16.6.83 could only be considered as a fresh appointment and not in continuation of the previous appointment and on that basis apart from restricting the back wages to 50% due to him, all consequential benefits would follow as if the petitioner had continued in service with effect from the date of his termination until his reinstatement.

19. The effect of the order passed by learned Single Judge was stayed by this Court and an amount of Rs. 30,000 was ordered to be paid to the respondent-petitioner vide order dated 16.2.99 on furnishing bank guarantee for the said amount in case the appeal succeeds. The said amount of Rs. 30,000 shall be retained by the respondent-petitioner in addition to 50% of the emoluments which the petitioner shall get in terms of the orders passed in this appeal. The Bank guarantee shall stand discharged. The implementation of the order shall be made within three months from the date of this order. The cost of this appeal shall be easy.

20. The appeal accordingly stands disposed of.

21. No orders as to costs.