
(1999) 03 PAT CK 0030
In the Patna High Court
Case No : C.W.J.C. No. 1336 of 1997 (R)

Meherson M. Madan

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 23-03-1999

Acts Referred:

Bank of India (Officers Service) Regulations, 1979 — Regulation 20(2), 20(3)
Constitution of India, 1950 — Article 226(2)

Citation : (1999) 47 BLJR 884 : (2001) 3 LLJ 376 : (1999) 9 PLJR 837

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The present application has been filed by the petitioner for a direction to the respondents to accept his resignation submitted by him on April 10, 1993 and to make the final settlement of the service dues. In the said writ application, the Bank filed a counter-affidavit wherein a statement was made that a departmental proceeding has been initiated against the . petitioner on April 11, 1997 and thereafter, the petitioner filed an amendment petition on October 13, 1998 praying therein for quashing of the departmental proceeding initiated against him vide dated April 11, 1997.

2. The facts necessary for disposal of the present writ application are that the petitioner was appointed as a temporary clerk/typist at Jamshedpur Branch of the Bank of India vide letter No. JD/29/St/46 dated December 12, 1966 which was extended up to December 22, 1967. Later on he was appointed as a clerical staff of the Bank at Jamshedpur and thereafter he was promoted to the Officer grade in November 1972 and in the meantime, he was : transferred from Jamshedpur to Gauhati. In 1988 he was posted at Paris (France) Branch of Bank of India and he continued there till December, 1992. He was relieved from the Paris (France) Branch on December 4, 1992 . with instruction to report to Zonal Manager, U.P. Zone of the Bank of India. Under the rule he was to be on 96 days

overseas leave from December 7, 1992 to March 12, 1993. However, he had reported to Zonal Office, at Lucknow on April 2, 1993. On April 10, 1993 the petitioner submitted his resignation to the General Manager of the Bank of India, Bombay through the Zonal Manager, Lucknow. In the said letter the petitioner stated that he has submitted his resignation from the service of the Bank as from April 10, 1993 itself and he also authorized the Bank to recover any amount legally due from him from the Saving Accounts with the Lucknow Branch. A copy of the said letter has been annexed as Annexure-2 to the writ application. On April 24, 1993 the Zonal Manager of the Lucknow Branch sent a communication to the petitioner informing him that under the Regulation 20(2) of the Bank of India (Officers) Service Relations, 1979 (hereinafter referred to as the Regulations), no officer shall resign from the service of the Bank otherwise than on the expiry of three months from the service on the Bank of a notice in writing of such resignation. In case officer desires to be relieved earlier he has to pay three months emoluments in lieu of the required notice period of three months. As such the petitioner has to pay three months emoluments in lieu of the notice period. The said amount cannot be recovered from the Saving Accounts as the said Accounts has not sufficient balance. He was also asked to pay liquidated damages of Rs. 1 lac as per bond executed by him in connection with posting abroad. A copy of the said letter has been annexed as Annexure-5 to the writ application. The petitioner on receipt of the aforesaid letter informed the Bank by letter dated May 5, 1993 that he has deposited the sufficient amount in his account to meet the amount to be repayable towards the three months' notice. As regard the liquidated damages of Rs. 1 lac he requested the Bank to deduct the same from the terminal benefits and repay the balance to him. A copy of the said latter has been annexed as Annexure-4 to the writ application.

3. The stand of the petitioner is that as he had fulfilled the aforesaid two conditions as mentioned in the communication of the Bank dated April 24, 1993 his resignation had become effective from August 5, 1993. He made request to the Bank to make settlement of the terminal benefits by filing a representation but the same was not done, hence he filed the present writ application.

4. In the writ application, the petitioner has also asserted in paragraph-4 that he is resident of Jamshedpur and the Respondent-Bank has its branches at all places including Jamshedpur. He was initially appointed at Jamshedpur and even after his resignation he is residing at Jamshedpur and all the communications after resignation have been made to him by the respondent-Bank at Jamshedpur and the same have been received by him there, hence this Court has jurisdiction to decide the controversy.

5. The respondent-Bank has filed the counter-affidavit and it is asserted on behalf of the Bank that this Court has no jurisdiction to entertain the writ as no part of cause of action has arisen within the territorial jurisdiction of this Court. It is also asserted that the petitioner was posted at Lucknow. He also submitted his resignation at Lucknow, which was not accepted by the Lucknow Office and a

departmental proceeding was also initiated at Lucknow, which is still pending at Lucknow and as such the cause of action arises within the territorial jurisdiction of the Allahabad High Court and not the territorial jurisdiction of the Ranchi Bench of the Patna High Court.

6. The Bank has admitted that the letter of resignation was sent by the petitioner on April 10, 1993 and the respondent-bank advised him to pay three months emoluments in lieu of the notice period and also to pay the liquidated damages of Rs. 1 lac by letter dated November 24, 1993. However, he did not make available Rs. 1 lac towards the liquidated damages. The competent authority after having gone into the matter did not accept the resignation due to certain irregularities with regard to which his explanation was awaited and the petitioner was informed about the aforesaid fact vide memo dated June 4, 1993 which was acknowledged by the petitioner on July 5, 1993. A copy of the said letter dated June 4, 1993 has been annexed as Annexure-A to the counter-affidavit. Since the irregularities committed by the petitioner related to the period of his postings as Officer at Paris (France) Branch of the Bank of India and also at Adityapur Industrial Estate Branch it took time to collect the materials and a departmental proceeding was initiated on April 11, 1997 and show cause was asked from the petitioner and after receipt of the show cause which was filed by the petitioner on July 10, 1997, a regular departmental proceedings was initiated on October 7, 1997 and the management case has been concluded on April 28, 1998 and now the inquiry is pending for the defence to lead evidence. The petitioner having knowledge of the initiation of the proceeding filed the present writ application concealing the aforesaid fact.

7. As stated above, the writ petition during the pendency of the application filed an amendment application challenging the initiation of the departmental proceeding. The respondents have objected the same on the ground that if the amendment is allowed then that will change the entire nature of the original writ application. The question raised in this case as to whether the resignation shall be treated to be accepted or not, has to be gone into after taking into consideration the several factors including the departmental proceeding which is pending against the petitioner and as such the amendment should be allowed to avoid the multiplicity of the proceeding. Accordingly, the amendment is allowed and the amendment petition be treated as a part of the writ application.

8. The first question to be decided in this writ application is about the maintainability of the writ petition.

9. It was vehemently submitted on behalf of the respondent-Bank that the writ petition is not maintainable in the Ranchi Bench of the Patna High Court for the reason that the cause of action wholly or partly has not arisen within the territorial jurisdiction of this Court whereas the Counsel for the petitioner submitted that out of three charges, one charge is with regard to the alleged irregularities committed by the petitioner while he was posted at Adityapur branch within the district of Jamshedpur and as such a part of cause of action

has arisen within the jurisdiction of this Court.

10. Under Article 226 of the Constitution of India after the insertion of Clause (1A) by Constitution (15th Amendment) Act, 1963 which has now been renumbered as Clause (2) by the Constitution of India (42nd Amendment) Act, 1976 the High Court has also power to issue directions, orders or writ as the cause of action arose wholly or in part within the territorial jurisdiction of the concerned High Court. Prior to amendment location or resident of the respondent to the writ application gave territorial jurisdiction to the Court.

11. Cause of action means every fact which, if traversed, would be necessary for the petitioner to prove in support of his right to have judgment in his favour. Whether the cause of action has arisen wholly or in part in a particular case depends upon the facts of the case and this has to be decided after taking into consideration the averments pleaded in support of the cause of action. To decide the question as to whether there is lack of territorial jurisdiction or not the Court has to consider all the facts asserted in the writ application in support of the cause of action without going into the correctness or otherwise of the said facts.

12. In this case the facts pleaded in the original writ application was that the petitioner was appointed at Jamshedpur and after resignation he is residing at Jamshedpur. All the communications by the Bank to him were sent to Jamshedpur. In the amendment petition as well as in the reply to the counter affidavit, the petition has asserted that one of the charges relates to the period when he was posted at Jamshedpur.

13. Admittedly, the petitioner at the time of resignation was posted at Lucknow and communication regarding not accepting his resignation was also made from Lucknow. Similarly, the departmental proceeding was initiated at Lucknow. He submitted his show cause at Lucknow and the departmental proceeding is going on at Lucknow and he had participated in the said proceeding at Lucknow as admitted by him. Thus, all the orders against the petitioner were passed at Lucknow and all the consequences were also suffered by the petitioner at Lucknow as admittedly he was posted at that place. Only because certain letters were communicated to him at his home address at his request or that some of the allegations related to the period when he was posted at Jamshedpur, it cannot be said that the cause of action arose in part within the territorial jurisdiction of the Ranchi Bench of the Patna High Court.

14. In the case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, , the question of jurisdiction of the Calcutta High Court to entertain the matter involved in the said case was raised. From the facts of the said case, it appears that in EIL (Engineers India Ltd., New Delhi) acting as consultant of ONGC issued an advertisement inviting tenders for setting up of Kerosene Recovery processing Unit at ONGC's Hazaria Complex in Gujarat. According to the terms of the advertisements, the tenders were to be submitted at New Delhi. The final decision was also to be taken at New Delhi. NICCO having its registered

office at Calcutta participated in the tender. The negotiations were held at New Delhi and its tender was not accepted. It challenged the said decision before the Calcutta High Court and the question of maintainability of the writ application was raised but the same was not decided and the Calcutta High Court issued interim directions to the ONGC. Aggrieved by the same the ONGC filed an appeal before the Apex Court challenging the order on the ground of non-maintainability of the writ application in Calcutta High Court. The Apex Court held that the question of territorial jurisdiction must be decided on the facts pleaded in the petition, the truth or otherwise of the averments made in the petition being immaterial. It held that as tenders were submitted in New Delhi, negotiations were held at New Delhi and the works were to be carried out at Gujarat, the Calcutta High Court has no jurisdiction to entertain the application only on the ground that NICCO read the advertisement at Calcutta, made the offer from Calcutta, made representations from Calcutta, sent FAX messages from Calcutta and received reply thereto at Calcutta. These facts would not constitute an integral part of the cause of action. The said decision is fully applicable to the facts of this case. As stated above, all the orders were passed at Lucknow and the consequences were also suffered there. Only because some letters have been sent to the petitioner at Jamshedpur address after he shifted to Jamshedpur the same cannot be said to be an integral part of the cause of action giving jurisdiction to this Court to entertain the writ application. Thus, the objection raised by respondents regarding the maintainability is valid one.

15. The parties have addressed this Court on merit of the case also. As such the matter is also being decided on merits on the assumption that this Court has jurisdiction to entertain this application.

16. According to the petitioner, he submitted his resignation on April 10, 1997 and thereafter, he was informed by the Bank to fulfil certain conditions vide letter dated April 24, 1993 as he fulfilled the aforesaid conditions by letter dated May 3, 1993 his resignation became effective from May 5, 1993. Thereafter, he ceased to be an employee of the Bank and he is entitled to his retiral dues and no departmental proceeding can continue after his retirement which, admittedly, was initiated according to the Bank's assertion on April 10, 1997.

17. The stand of the Bank is that under the terms of regulations, the resignation will be effective only after its acceptance by the competent authority and as the competent authority has not accepted the resignation vide letter dated June 4, 1993 (Annexure-A) which was acknowledged by the petitioner, his resignation never became effective and accordingly, the continuance of the departmental proceeding is valid as he continued to be an employee of the Bank.

18. It is an admitted position that the aforesaid Regulations apply in the case of the petitioner. Regulation 20 contains the provisions with regard to the termination of services. Clauses (2) and (3) are relevant for the purpose of this case and as such they are reproduced below:

Clause (2) : An officer shall not leave or discontinue his service in the Bank without first giving a notice in writing of his intention to leave or discontinue his service or resign. The period of notice required shall be 3 months and shall be submitted to the competent authority as prescribed in these regulations.

Provided further that the competent authority may reduce the period of 3 months, or remit the requirement of notice.

Clause (3) : (i) An officer against whom disciplinary proceedings are pending shall not leave/discontinue or resign from his service in the bank without the prior approval in writing of competent authority and any notice or resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the Competent Authority.

(ii) Disciplinary proceedings shall be deemed to be pending against any employee for the purpose of this regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings shall not be instituted against him and will be deemed to be pending until final orders, are passed by the competent authority.

(iii) The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation (sic) till the proceedings are completed and final order is passed thereon except his own contribution to GPF.

19. A conjoint reading of Clauses (2) and (3) of Regulation 20 shows that before an officer discontinues or retires from the service, he has to give notice as mentioned therein in writing showing his intention to leave or resign, the period of which shall be three months unless it is reduced by the competent authority or salary for three months is paid in lieu of the notice. However, if the officer is facing departmental proceeding he cannot be allowed to leave, discontinue or resign without prior approval of the competent authority and any notice of resignation given by him before or during the departmental proceeding will not be effective unless it is accepted by the competent authority.

20. According to the petitioner as no departmental proceeding was pending when he submitted his resignation Clause (3)(i) is not attracted in his case and as such the approval or acceptance by the competent authority is not required and his resignation became effective as soon as the petitioner complied with the conditions mentioned in Clause (2) of Regulation 20.

21. Regulation 20(3)(i) applies to cases where an employee is facing departmental proceeding. In such a situation notice or resignation given by an employee whether before or during the disciplinary proceeding shall not become effective unless accepted by the competent authority. In the present case, the

letter of resignation was given prior to initiation of departmental proceeding and according to the petitioner, it became effective on fulfilment of conditions as mentioned in Regulation 20(2) prior to initiation of the departmental proceeding whereas according to the Bank, the same was not accepted and petitioner was informed about the same before initiation of the proceeding. In view of the aforesaid stands taken by the parties, Regulation 20(3)(i) is not applicable in this case.

22. The next question is as to whether on the submission of a resignation letter and fulfilment of the conditions in terms of the letter of the Bank, the petitioner's resignation will be treated to have been effective.

23. The admitted fact is that petitioner submitted his resignation and he was asked by the Bank vide letter dated April 24, 1993 contained in Annexure-3 to pay the three . months" emoluments and to pay the liquidated damages of Rs. 1 lac. The petitioner deposited the aforesaid emolument in his account and requested the Bank to recover the aforesaid amount from his terminal dues. The competent authority [General Manager (P)] vide letter dated June 4, 1993 contained in Annexure-A to the counter-affidavit informed the petitioner that his letter of resignation is not accepted as the authorities have to receive the petitioner's explanation with regard to the memoranda issued to him in connection with certain irregularities committed by him. It was clearly mentioned that consequent upon non-acceptance of resignation, the Bank would continue to have disciplinary and administrative jurisdiction over the petitioner and the petitioner would also continue to be in the employment of the Bank. Thus, the resignation of the petitioner was not accepted by the Bank.

24. Clause 2 of the Regulation 20 provides that an employee will leave and discontinue his service in the Bank on fulfilment of the conditions mentioned therein. It was submitted on behalf of the petitioner that in absence of a provision for prior approval or acceptance of resignation by competent authority in Regulation 20(2) the resignation of the petitioner became effective on fulfilment of conditions mentioned in the said Regulation.

25. The law with regard to the resignation of an employee is well settled. The act of relinquishment in case of contract of employer is of bilateral character and the resignation of an employee becomes effective only on acceptance of the same by the employer.

26. In the case of Raj Kumar Vs. Union of India (UOI), the Apex Court has held that when a public servant requests for determination of his employment by letter of resignation, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority. The same view has been reiterated by the Apex Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others, and Moti Ram Vs. Param Dev and another, . In the last case the Apex

Court has held as follows:

"If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in pmesenti. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g. acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it."

It has been further held that-

"A contract of employment, however, stands on a different footing wherein the Act of relinquishment is of bilateral character and resignation of an employee is effective only on acceptance of the same by the employer. Insofar as Government employees are concerned, there are specific provisions in the Service rules which require acceptance of the resignation before it becomes effective."

27. Thus, the letter of resignation filed by the petitioner showing his intention to resign with effect from the date mentioned in the letter and fulfilment of conditions will not make an act of resignation effective from the date mentioned in the letter. It will be effective only when it is accepted by the employer. As in this case the employer has not accepted the resignation, the resignation never became effective and the petitioner shall be deemed to continue in the employment.

28. As the petitioner is still in employment and his resignation never became effective, there is no question of payment of terminal dues and also there is no legal bar in continuance of the departmental proceedings in which the petitioner has participated and the employer has closed his case and only the petitioner has to adduce the evidence as mentioned above.

29. In the result, there is no merit in this writ application and the same is dismissed.