
(2016) 02 AP CK 0056

In the Andhra Pradesh High Court

Case No : Writ Petition No. 27217 of 1999

M.K. Tirupathi Rao

APPELLANT

Vs

The Deputy General Manager, Syndicate Bank

RESPONDENT

Date of Decision : 12-02-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16, Article 21, Article 226, Article 311
Evidence Act, 1872 — Section 114, Section 114(f), Section 16
General Clauses Act, 1897 — Section 27
Negotiable Instruments Act, 1881 (NI)

Citation : (2016) 3 ALT 363 : (2016) 4 AndhLD 119 : (2016) LIC 1632 : (2016) 3 RSJ 636 : (2016) 3 SCT 155

Hon'ble Judges : M. Satyanarayana Murthy, J.

Bench : Single Bench

Advocate : J. Sudheer, for the Appellant; K. Srinivasa Murthy, for the Respondent

Final Decision : Dismissed

Judgement

M. Satyanarayana Murthy, J.—1. This Writ Petition, under Article 226 of the Constitution of India, 1949 is filed by the petitioner to issue a writ of certiorari calling for the records in proceedings No. 711/ZOH/PSWW/303286 dated 12.03.1999 as reconfirmed by letter No. 2801/ZOH/PS/AS/303286/99 dated 18.09.1999 and quash the same as they are illegal, arbitrary and in violation of clause 17(a) of the 5th Bi-Partite Settlement (for short, "the B.P.S.") dated 10.04.1989 and reinstate the petitioner into service with all consequential benefits.

2. The case of the petitioner, in brief, is that initially he joined as Clerk in respondent-bank on 09.04.1979; served in various branches and completed two decades of unblemished service; while he was working at Vijayawada Main Branch, he proceeded on leave duly informing the Manager, submitted leave application in June, 1998 and was extending leave from time to time annexing medical certificates confirming that he was still under treatment. While the petitioner was undergoing treatment, suddenly, his mother fell seriously ill; the

petitioner, being the eldest male member in the family, was under obligation to take care of his mother; shifted his residence to his native place informing the latest address to the Manager through an application for extension of leave and that he submitted his applications to the Manager periodically in accordance with the Leave Rules and submitted leave applications for the period from 06.06.1998 to 02.10.1998 and 03.10.1998 to 15.06.1999, filed a copy of the leave letter dated 28.06.1999 along with the medical certificates to establish that he was under treatment for his ailment. As there was no response to his letter either from the Branch Manager or from the Regional Manager, he addressed another letter dated 27.08.1999 to the Deputy General Manager, Zonal Office, Hyderabad furnishing details of leave on medical grounds and requested to look into the matter; post him in any of the branches near to his native place Nandigama enabling him to attend his ailing mother, while discharging his official duties, marked a copy to the Regional Manager, Regional Office, Vijayawada and an advance copy to the Main Branch, Vijayawada. In response, the respondent sent a letter No. 2801/ZOH/PS/AS/303286/99 dated 18.09.1999 informing that the services of the petitioner were voluntarily abandoned as per Clause 17(a) of the B.P.S. and further informed that vide his letter No. 711/ZOH/PSWW/303286 dated 12.03.1999, he has abandoned the services of the petitioner but the same was not received by the petitioner till date.

3. As per Clause 17(a) of the B.P.S., a duty is cast upon the management to issue a notice to the delinquent employee to his last known address and obtain explanation for his absence without applying any leave and service of such notice is mandatory.

4. In the letter dated 18.09.1999, there is a vague reference in letter dated 12.03.1999 allegedly issued to the petitioner in compliance of clause 17(a) of the B.P.S. without disclosing the details while making an allegation that receipt of the same was acknowledged by the petitioner but neither failed to resume to duty nor submitted any satisfactory reply and, on account of such conduct, his services were terminated and such procedure is totally contrary to clause 17(a) of the B.P.S.

5. In fact, the petitioner was prompt in sending leave letters, which is clear from the leave sanction letter of Divisional Office, Vijayawada (No.DOV/3348/PC/771 dated 25.01.1995) and that he availed Extra Ordinary Leave (EOL) on Loss of Pay from 1994, after completion of 15 years of unblemished record and that only on account of the circumstances beyond his control, which indicates that he was regular to the office during the period.

6. Though the respondent allegedly sent a letter in compliance of clause 17(a) of the B.P.S., no such letter was served on the petitioner and it is in violation of fundamental right to work and, therefore, the order passed by the respondent is contrary to the scheme of B.P.S. and that termination of services of the petitioner is against Articles 14, 16, 21 and 311 of the Constitution of India and, therefore, the order is liable to be quashed.

7. The petitioner further contended that he submitted a representation on 27.08.1999 to permit him to report to duty; thereupon, the respondent informed him that his services were voluntarily abandoned vide letter No. 711/ZOH/PSWW/303286 dated 12.03.1999, without reasonably deciding the representation; therefore, the order is void ab-initio. Since the notice required under Clause 17(a) of the B.P.S. is mandatory, the alleged termination or abandonment of services of the petitioner voluntarily is illegal, irrational and liable to be set-aside, prayed to pass appropriate order issuing writ of certiorari.

8. The respondent filed a detailed counter admitting appointment of the petitioner as Clerk and applying for leave, sanction of the same initially; thus, admitted the relationship between the petitioner and respondent as an employee and employer; the petitioner was transferred from Vijayawada Main Branch to Rajampet Branch on 20.06.1998; as such, the petitioner is only ex-clerk of Rajampet Branch but not a clerk worked in Vijayawada Main Branch. The petitioner has joined the Bank on 09.04.1979 and he was in the habit of absenting to duties without following Leave Rules and the petitioner was served the following letters for not following Rules and for his unauthorized absence:

"1940: DOV 3348 : PC:F-771, dt. 02.03.90

DOV 3348 : PS 259 : 96 : F-771, dt. 21.03.96

DOV 3348 : PS 40 : 96, dt. 13.01.96

DOV 3348 : PS 2395 : F-771, dt. 23.09.95

DOV 3348 : PS:533:96:F-71, dt. 20.06.96

DOV 3348 : 3706:92:PS : F-771, dt. 10.12.92

DOV 96 : 3340 : STF, dt. 23.09.96

DOV 3348 : PS:461 : F-771, dt. 24.05.96"

9. It is further contended that the petitioner was continuously absent for more than 90 days from 29.08.1996. Hence, "voluntary cessation" notice was served on the employee vide Zonal Office letter No. 300:ZOH:PS:WW:303286, dated 31.01.1997; which notice was served on him on 12.02.1997 and he leisurely reported to duty only on 12.03.1997. Thus, the petitioner was in the habit of absenting himself without any justifiable or reasonable cause.

10. It is specifically contended by the respondent that a charge sheet cum show-cause notice bearing No. SN:HYD:97:81 dated 06.06.1997 was issued for unauthorized absence for a period of 315 days and awarded punishment of stoppage of next increments by 3 months. The respondent denied the allegation that the petitioner proceeded by applying leave annexing medical certificates in the month of June, 1998 and extending his leave from time to time while contending that those allegations are invented for filing of the Writ Petition. It is specifically contended by the respondent that when the petitioner was due for

transfer out of Vijayawada area on "redeployment transfer policy", started influencing/resisting his transfer. When his efforts failed, the petitioner started absenting from duties from 06.06.1998 to 20.06.1998 without submitting any leave application and, hence, he was relieved in absentia on 20.06.98 on transfer to Rajampet Branch. The relieving letter sent to the petitioner to his last known address was returned with remarks "absent".

11. In fact, the petitioner never submitted any leave letters nor sought extension of leave and the letters sent on 20.11.1998, 23.11.1998, 31.12.98 were returned with an endorsement "absent"; thereupon, voluntary cessation notice dated 07.12.98 was sent on 31.01.99 and final proceedings sent with letter dated 12.03.99 but they were returned with an endorsement "absent".

12. The respondents denied the alleged averment submitted by the petitioner for sanction of any leave and extension. Thereafter, since the petitioner did not report to duty either at Vijayawada before his transfer or at Rajampet after his transfer, letters dated 23.11.98, 31.12.98 sent by the Regional Office, Kadapa, were returned with an endorsement "absent". Thus, the petitioner cleverly avoided receipt of the notices sent in compliance of Clause 17(a) of the B.P.S.

13. It is further contended that the respondent is a nationalized bank and in the service industry where customer service is of utmost importance. If any employee remain absent for long periods, it will definitely affect not only customer service but also total working of the branch. In the days of growing competition, the need for improving customer service is of paramount importance. The employees indiscipline need to be checked and they should not be allowed to exploit the legal system in support of their indiscipline. The petitioner has made a representation for exemption from rotational transfers on the ground that he is the Central Executive Member of Syndicate Bank Employees Association and the same was not considered by the respondent-bank. Thereafter, he never reported to duty and remained absent unauthorizedly, despite issuance of several letters calling upon him to report to duties. Thus, the petitioner has a vast record of his unauthorized absence and service of cessation notices sent to the petitioner were returned with an endorsement "absent" after several efforts to serve on him by the postman. The petitioner should have authorized any of his family members to receive his post in case he was going out of station. The remarks "absent" after repeated attempts by the postman are enough to prove that the petitioner has avoided receipt of notices. As per the service conditions applicable to the petitioner, if any notice or communication sent to the last known address of the employee by registered post is returned undelivered, the same would be deemed as valid service. Admittedly, the petitioner was staying elsewhere and not in the address furnished to the respondent-Bank for communication during the period of his unauthorized absence. Hence, the efforts of the respondent-bank to serve letters were proved futile. The petitioner being a responsible employee of the bank, instead of obeying the orders have remained unauthorizedly absent causing serious

dislocation of the branch work at transferee branch. The petitioner 15 months after his relieving from Vijayawada Main Branch has exhibited inclination to report for duty only for preparing the grounds for present Writ Petition. Thus, the petitioner's habitual absenteeism led the respondent-bank to terminate his services in terms of clause 17(a) of the B.P.S. after following necessary procedure; and, therefore, the action of the respondent-bank is not illegal and that the petitioner is not entitled to claim any relief and, finally, prayed to dismiss the Writ Petition.

14. During course of hearing, Sri J. Sudheer, learned counsel for the petitioner, would contend that the petitioner had applied for leave initially and, later, extended it from time to time but the respondent had neither sanctioned leave nor rejected it on medical grounds. Even otherwise, issue of notice as per clause 17(a) of the B.P.S is mandatory. Mere "giving" notices is not sufficient and the respondent has to make necessary attempts to serve notice in any other modes and mere return of registered letters with an endorsement "absent" is not sufficient to accept compliance of clause 17(a) of the B.P.S. for the reason that, the notice as per clause 17(a) of B.P.S. is to be served enabling the employee to explain the reasons for his absence or inability to report to duty within 30 days or to report to duty within 30 days from the date of receipt of notice.

15. In the absence of effective service, the question of explaining the reasons or reporting to duty within 30 days does not arise in view of clause 17(a) of the B.P.S. Therefore, when the notice is not served, termination of services of the petitioner on the ground of voluntary abandonment is illegal; in support of his contention, placed reliance on a decision of this Court in S. Ramachandra Alse Vs. Dy. General Manager, Syndicate Bank, Hyderabad and another , 1999 (3) ALT 716, wherein this Court relied on the judgment of the Apex Court in Union of India and others Vs. Dinanath Shantaram Karekar and others , 1998 (6) Supreme 534 and, on the strength of these two decisions, it is contended that actual service of notice on the petitioner as per clause 17(a) of the B.P.S. is mandatory and, in the absence of any mandatory notice, termination of services of the petitioner is illegal and, finally, prayed to allow this Writ Petition.

16. Per contra, Sri A. Krishnam Raju, learned counsel, appearing on behalf of Sri K. Srinivasa Murthy, learned standing counsel appearing for the respondent-bank, submitted that clause 17(a) of the B.P.S. obligates the respondent to give notice to the last known address of the petitioner but not actual service of notice. In fact, the respondent addressed several letters and finally a cessation notice was given in compliance of clause 17(a) of the B.P.S. which was returned with an endorsement "absent". In the absence of actual service of notice, as per clause 17(a) of the B.P.S., "giving" notice is sufficient to terminate the services of the petitioner in view of the B.P.S. and drawn the attention of this Court to a decision of the Apex Court in C.C. Alavi Haji Vs. Palapetty Muhammed and another , 2007 (6) SCC 555, wherein the Apex Court drawn the distinction between "giving of notice" and "serving notice" in various paragraphs, placing reliance on another

decision of the Apex Court in Syndicate Bank Vs. General Secretary, Syndicate Bank Staff Association and another , AIR 2000 SC 2198. learned standing counsel for the respondent-bank submitted that since the petitioner voluntarily abandoned his services in the bank by absenting himself for more than 90 consecutive days and even after sending notice, it is obligation of the employee to furnish the changed address, if any, so as to enable the employer i.e., the respondent-bank to sent any communication but strangely the petitioner being the member of Syndicate Bank Employees Association cleverly avoided to furnish his changed address to receive notices and other communications sent to his last known address. If such gross negligence of the petitioner is accepted as sufficient cause, for his failure to report to duty, it is difficult for the respondent-bank to serve cessation notice on any of the employees; since clause 17(a) of the B.P.S. did not contemplate any specific mode of giving notices, prayed to dismiss the Writ Petition.

17. In view of the rival contentions, the sole point that arises for consideration is:

"Whether a notice as required in clause 17(a) of the B.P.S is deemed to be served on the petitioner? If not, whether the petitioner be reinstated into service with all consequential benefits?"

18. POINT: It is the case of the petitioner, from the beginning, that due to ill-health, he applied for leave and, thereafter, his mother was bed-ridden; consequently, he being an elder member in the family, was forced to shift his family to Nandigama, Krishna district while working at Vijayawada Main Branch and that he informed his changed address to the respondent in the leave letters sent to the respondent and that no notice of voluntarily abandonment of services was served upon him either to give explanation for his absence or to report to duty, within 30 days from the date of receipt of such notice, as specified in clause 17(a) of B.P.S. Therefore, his removal from service on the ground that he voluntarily abandoned his services is illegal; whereas, the specific plea of the respondent-bank, from the beginning was that the notice as required under clause 17(a) of the B.P.S. was sent to the last known address of the petitioner and several letters of correspondence sent to his last known address were returned with an endorsement "absent" and that the petitioner though obligated to inform his changed address to correspond by the respondent, intentionally avoided to inform his changed address and no intimation as alleged in Para 3 of the writ petition was sent along with the alleged leave letters; therefore, the notice is deemed to be served on the petitioner and, consequently, there is no illegality in termination of services of the petitioner and that the respondent did not violate the terms and conditions of B.P.S.

19. Before deciding the real controversy between the parties about the service of notice as required in Para 17(a) of B.P.S., I feel that it is apposite to extract clause 17(a) of B.P.S., which is as follows:

"17. Voluntary Cessation of Employment by the Employees: The earlier provision

relating to the voluntary cessation of employment by the employee in the earlier settlements shall stand substituted by the following:

(a) When an employee absents himself from work for a period of 90 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 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 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 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, 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 a vocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank 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 himself for a period."

20. In view of clause 17(a) of B.P.S., a duty is cast upon the respondent to issue notice to the employee to his last known address calling for an explanation for his absence or enable him to report to duty within 30 days from the date of receipt of such notice thereby it is mandatory. Undoubtedly, notices or correspondence sent to the respondent were returned with an endorsement "absent". The petitioner shifted his residence to Nandigama due to ill-health of his mother and while extending leave he allegedly informed his changed address, raised such plea in Para 3 of the affidavit and it is extracted hereunder for better appreciation:

"3. I humbly submit that when I was under treatment, my mother suddenly fell seriously ill and being eldest of the family I have to take care of her, and when the situation compelled me, I shifted my residence to my native place and informed the latest address to the Manager through my extension of leave letter, and was submitting my leave applications to the branch periodically in accordance with the leave rules."

21. Thus, the contention of the petitioner is that he informed his changed address while extending leave but he did not produce any such letter under acknowledgment of receipt of the same by the branch office except filing 2 medical certificates to establish that he was suffering from ill-ness from 06.06.98 to 02.10.98 and 03.10.98 to 15.06.99. When the petitioner contended that he informed his changed address, it is for him to produce necessary material to establish the same but, obviously for reasons best known to him, he did not

produce any iota of evidence to substantiate his contention about the information given to the Manager of the respondent-bank about his changed address. Curiously, he addressed a letter dated 27.08.1999 to the Deputy General Manager, Zonal Office, Hyderabad, furnishing the details as to why he could not report to duty with a request to look into the matter. The letter dated 27.08.1999 was addressed to the Deputy General Manager, Syndicate Bank from his address bearing House No. 3-55/C, Rythupeta, Nandigama, Krishna District. In the body of the letter, he made an allegation that he has been extending his leave from time to time due to his sickness submitting extension of leave letters while expressing inclination to report to duty from 01.07.1999 submitting his medical certificates; thereupon, the Zonal Office, addressed a letter dated 18.09.1999 to the petitioner to his changed address informing about issuance of proceedings dated 12.03.1999 for compliance of necessary formalities required under clause 17(a) of B.P.S. In the letter dated 12.03.1999 issued by the Deputy General Manager, no details of removal from service due to voluntary abandonment were furnished. Therefore, for non-disclosure of the details, the petitioner contended that the letter was subsequently created but such contention cannot be accepted for the reason that the voluntary abandonment of services, a notice, required under clause 17(a) of B.P.S., was sent to the petitioner to his last known address and the said notice was returned with an endorsement "absent". Curiously, voluminous material available on record, more particularly, the following letters produced by the respondent would go to show that it was issued in compliance of clause 17(a) of B.P.S. for his absence on various dates without applying any leave, calling for his explanation, which are as follows:

22. From the above tabular form, it is clear that the letter dated 02.03.90 was issued to the petitioner in compliance of clause 17(a) of B.P.S. for his absence on various dates without applying any leave, calling for his explanation within 7 days therefrom. Later on, 21.03.1996, a notice in compliance of clause 17(a) of B.P.S calling the petitioner to give explanation for his absence without applying for any kind of leave and for his failure to report to duty. Even according to the contents of the letter, the petitioner was absent on 22.01.96, 24.01.96, 02.02.96, 05.02.96 and also from 12.02.96 onwards, without prior application or sanction of the leave, and called upon him to report to duty immediately by offering his explanation by 26.03.1996. Thus, several correspondences were issued to the petitioner, whenever he was absent, calling upon him to report to duty.

23. The petitioner, as seen from the material on record, was not regular to his duties and without following the leave rules, did not attend to duty and the letters dated 10.12.1992, 23.09.1996 and 24.05.1996 clearly disclosed the conduct of the petitioner while working in the Main Branch at Vijayawada; finally, on 31.01.1997, the Zonal Office, Hyderabad issued notice calling upon the petitioner to report duty within 30 days of receipt of the letter, in compliance of clause 17(a) of B.P.S., annexing the period of absence in four spells and the total days of absence was 315. Later, another notice dated 06.06.1997 was issued to

the petitioner calling for written statement of defence within 15 days of receipt of this notice initiating domestic enquiry. Again on 07.12.1998 a notice under clause 17(a) of B.P.S. was issued complaining his wilful absence treating his absence as voluntary abandonment of service. Again, on 12.03.1999, another notice was sent to the petitioner in compliance of clause 17(a) of B.P.S. complaining that he was absent from 21.06.1998 and treated his unauthorized absence as voluntary abandonment of service since the petitioner neither gave any explanation nor reported to duty. On 20.11.1998 the Regional Manager addressed a letter to the petitioner's address at Nandigama requesting to report to duty immediately while offering an explanation for his absence. The Regional Manager again sent a letter dated 31.12.1998 requesting the petitioner to report to duty immediately and offer explanation for his absence from 21.11.1998 to 31.12.1998 but all these letters were returned with an endorsement "absent" though the postal peon made sincere attempts to serve letters on the petitioner waiting for 6 days and some of the letters were sent to the address of the petitioner at Nandigama, Krishna District but they too returned with an endorsement "absent".

24. In view of return of letters on account of absence of the petitioner both at Vijayawada and at Nandigama, the cessation notice on the ground of voluntary abandonment of services was not personally served. However, it is evident from the material that the petitioner was habituated to absent from duty without applying/sanctioning of any kind of leave. Several times the petitioner was absent and notices, under clause 17(a) of B.P.S., were issued to him asking him to report to duty and that apart, he is an active member of the Union, who knows very well about the terms and conditions of B.P.S.; despite it, the petitioner conveniently avoided to receive notices furnishing different addresses to the authorities to disable the respondent to serve any notice on him.

25. The main contention of learned counsel for the petitioner is that when no notice was served, strictly adhering to clause 17(a) of B.P.S., the proceedings terminating services of the petitioner on the ground of voluntary abandonment of services is illegal. Sri J. Sudheer, learned counsel for the petitioner, mainly placing reliance on the decision of the Apex Court in Dinanath Shantaram Karekar , 1998 (6) Supreme 534, wherein the Apex Court, while dealing with service of notice in disciplinary proceedings, in paragraphs 3 and 4 held as follows:

"3. Respondent was an employee of the appellant. His personal file and the entire service record was available in which his home address also had been mentioned. The charge sheet which was sent to the respondent was returned with the postal endorsement "not found". This indicates that the charge sheet was not tendered to him even by the postal authorities. A document sent by registered post can be treated to have been served only when it is established that it was tendered to the addressee. Where the addressee was not available even to the postal authorities, and the registered cover was returned to the sender with the endorsement "not found", it cannot be legally treated to have been served. The

appellant should have made further efforts to serve the charge sheet on the respondent. Single effort, in the circumstances of the case, cannot be treated as sufficient. That being so, the very initiation of the departmental proceedings was bad. It was ex-parte even from the stage of charge sheet which, at no stage, was served upon the respondent.

4. So far as the service of show cause notice is concerned, it also cannot be treated to have been served. Service of this notice was sought to be effected on the respondent by publication in a newspaper without making any earlier effort to serve him personally by tendering the show-cause notice either through the office peon or by registered post. There is nothing on record to indicate that the newspaper in which the show-cause notice was published was a popular newspaper which was expected to be read by the public in general or that it had wide circulation in the area or locality where the respondent lived. The show-cause notice cannot, therefore, in these circumstances be held to have been served on the respondent. In any case, since the very initiation of the disciplinary proceedings was bad for the reason that the charge sheet was not served, all subsequent steps and stages, including the issuance of the show-cause notice would be bad."

26. This Court, in *Ramachandra Alse* , 1999 (3) ALT 716, relying on the decision of the Apex Court in *Dinanath Shantaram* , 1998 (6) Supreme 534, held that when a notice issued in compliance of clause 17(a) of B.P.S. was returned with postal endorsement "addressee left" and "absent", an order passed on that endorsement declaring that the petitioner has been voluntarily retired from service is not sustainable as the respondent-bank did not take any further steps to notify the petitioner about its intended action by other modes known to law. Therefore, the order passed by the respondent-bank treating that the employee voluntarily abandoned his services or retired from service is not sustainable and set-aside the same.

27. In view of the principle laid down by the Apex Court and this Court in the decisions referred supra, it is clear that a notice, under clause 17(a) of B.P.S, is required to be served personally on the employee; when notice was served with an endorsement "not found" that does not amount to tendering of notice to the petitioner by postal authorities and, in the absence of any such tendering of the notice, it cannot be deemed to be served and unless notice is served, enabling the employee to report to duty or to give explanation for his absence, such proceedings are vitiated due to non compliance of clause 17(a) of B.P.S.

28. In *Syndicate Bank* , AIR 2000 SC 2198, when a similar case came up before the Apex Court, the Apex Court considering the facts therein held that when a notice in compliance of clause 16 of B.P.S. was sent by registered post but it was returned with the report of the postal authorities that he refused to receive the same, the bank by virtue of clause 16 of B.P.S treated the delinquent as having voluntarily abandoned his services. The order of the Bank was similarly sent to delinquent under registered cover but was returned with the endorsement of the

postal authority "not found during delivery time". In those circumstances, it was held as follows:

"The notice was sent on the correct address of delinquent and it was received back with the postal endorsement "refused". A clear presumption arose in favour of the bank and against delinquent. Yet the Tribunal held that no notice was given to him as postman was not produced by the Bank. This would be rather an incongruous finding by the Tribunal. Bank has followed the requirements of clause 16 of the Bipartite Settlement. It rightly held that delinquent has voluntarily retired from the service of the Bank. Under these circumstances it was not necessary for the Bank to hold any inquiry before passing the order."

29. In *Mada Lokeswara Prasad Vs. UCO Bank*, a Government of India Undertaking, Rep. by it's Manager , 2010 (1) ALT 71, the Division Bench of this Court held that when a notice sent by registered post was returned to the bank with an endorsement "addressee absent", the respondent-bank published notice dated 14.10.1991 in the local Telugu daily "Udayam". Such service of notice in compliance of clause 17(a) of B.P.S. is sufficient and the contention of learned counsel for the petitioner that clause 17(a) of B.P.S. has to be construed strictly and that when the respondent-bank failed to serve notice on the employee it vitiates the proceedings was not accepted.

30. As seen from the legal position, the law declared by the Apex Court and the Division Bench of this Court, when notice was tendered/sent or returned with an endorsement of "refusal" or "absent" or "left without instructions" is sufficient service.

31. The language used in clause 17(a) of B.P.S. which obligated the employer "to give notice to the last known address of the employee" may be either in writing or oral and it is only an intimation calling upon the employee to report to duty within 30 days from the date of receipt of such notice or give explanation for his absence. The language used in clause 17(a) of B.P.S. is clear that giving notice is sufficient and it did not contemplate service of notice on the employee, strictly speaking, but on a harmonious construction of clause, it can safely be concluded that giving notice with an intention to receive explanation or enable the employee to report to duty indicates that it is required to be given to the employee about the proposed action to be taken by the employer against the employee for his continuous absence of 90 days without applying any kind of leave and sanction of the same. In the present facts of the case, notices were sent to the petitioner in compliance of clause 17(a) of B.P.S., which were returned though the postal peon took the notices to his address 4 or 5 times but it was ultimately returned with an endorsement "continuously absent". When such notices were sent and postal peon made an attempt to serve the notices a presumption is to be drawn that notices were taken to the residence of the employee. The endorsements made on the notices are a prima-facie evidence of taking the notices to the address of the petitioner, in view of Section 14 of the Indian Post Office Act, 1898 (for short, "the Act of 1898"), which reads as

follows:

"14. Post Office marks prima facie evidence of certain facts denoted: In every proceeding for the recovery of any postage or other sum alleged to be due under this Act in respect of postal article -

(a) the production of the postal article, having thereon the official mark of the Post Office denoting that the article has been refused, or that the addressee is dead or cannot be found, shall be prima-facie evidence of the fact so denoted, and

(b) the person from whom the postal article purports to have come, shall, until the contrary is proved, be deemed to be the sender thereof."

32. Therefore, from the language used under Section 14 of the Act of 1898, notings made on the postal article are prima-facie evidence of fact so noted on the article or postal cover.

33. Under Section 27 of the General Clauses Act, 1897 (for short, "the Act of 1897"), there is a presumption of service when the letter was addressed to correct address by registered post and it reads as follows:

"27. Meaning of service by post - where any (Central Act) or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, where the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

34. In *Parimal Vs. Veena @ Bharti* , AIR 2011 SC 1150, the Apex Court, relying on its earlier decision in *Greater Mohali Area Development Authority and others Vs. Manju Jain and others* , AIR 2010 SC 3817, held that in view of the provisions of Section 114 illustration (f) of the Evidence Act, 1872 (for short, "the Act of 1872") and Section 27 of the Act of 1897 there is a presumption that the addressee has received the letter sent by registered post.

35. In similar circumstances, the Apex Court in *Gujarat Electricity Board and another Vs. Atmaram Sungomal Poshani* , AIR 1989 SC 1433, held as follows:

"There is presumption of service of a letter sent under registered cover, if the same is returned back with a postal endorsement that the addressee refused to accept the same. No doubt the presumption is rebuttable and it is open to the party concerned to place evidence before the Court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered the registered letter to him or that there was no occasion for him to refuse the same. The burden to rebut the presumption lies on the party, challenging the factum of service."

36. In the present case, the question of adducing any evidence to rebut the presumption does not arise except producing documents which are not disputed but no documents were produced to rebut the presumption contained under Section 27 of the Act of 1897.

37. At this stage, it is relevant to refer Section 16 of the Act of 1872, which reads as follows:

"16. Existence of course of business when relevant -When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact."

38. Illustrations contained therein says that when a question is whether a particular letter was despatched, the fact that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place, are relevant; and the question is, whether a particular letter reached the addressee, the fact that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

39. In well established offices or firms, books are kept or business is conducted on such settled lines and principles that when the doing of a particular act comes in question, it may be reasonably inferred that the uniformity of the general course was followed in the particular case. When the course of business usually followed is proved, the probability is that there was no departure from the common course of business in the particular transaction. In the case of public offices like the post office, where work is carried on with almost mechanical regularity, the probability becomes stronger that the letter was despatched in due course or reached destination.

40. Thus, it is clear from Section 16 of the Act of 1872, when a letter was sent by registered post in the course of its business, the post office would have taken the letter to the address mentioned on the postal cover and when it is returned, the notings thereon are the prima-facie proof of absence of the addressee at the address given.

41. Section 114(f) of the Act of 1872 says that the Courts may presume the existence of any fact which it thinks likely to happen, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. So, a presumption shall be drawn that a particular thing was done in the course of its business by public office or in private office; illustration (f) is relevant for deciding the controversy involved in the instant case.

42. The presumptions contained in Section 114 of the Act of 1872 are only to draw an inference as to the existence of one fact from the existence of some other fact. Service of a letter sent by registered post is a presumption of fact and it is a rebuttable presumption. The parties may adduce evidence to rebut the presumption contained under Section 114 of the Act of 1872. If the party

disputes the presumption of fact he can adduce evidence to rebut the same but here the scope is too limited to adduce any evidence to rebut the presumption in a petition filed under Article 226 of the Constitution of India.

43. The cumulative effect of both Sections 16 and 114 of Act of 1872 is that when a letter was sent by registered post, the act of postal peon carrying the letter to the addressee is said to have done in its regular course of business, which the postal authorities have been doing is a relevant fact. Section 114(f) enables the Court to presume the existence of any fact which it thinks likely to happen, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case, the court can presume that common course of business has been followed in a particular case. When applied to communications sent by post, Section 114 enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. The presumption that is raised under Section 27 of the Act of 1897 is a far stronger presumption.

44. In *Ravi Raghuramayya Vs. Koneru Rama Tulasamma*, 2004 (4) ALT 526, this Court while deciding the question about validity of service of notice when it was returned with an endorsement "that the addressee failing to take delivery", placing reliance on Section 14 of the Act of 1898 and relied on the earlier decision of this Court in *Saladi Srirama Murthy Vs. K. Swaminaidu*, 1992 (1) ALT 555, wherein this Court held as follows:

"Then the question that arises for consideration is whether Ex. A-4 notice is valid. It was sent by registered post by the plaintiff to the defendant on 25th February, 1972. The registered letter was returned to the plaintiff with an endorsement of the postman that the addressee was avoiding to take delivery of notice. The various endorsements made on Ex. A-4 by the Postman show that the addressee (defendant) was not available for service of notice on several occasions as mentioned therein whenever the Postman went to him to serve the notice. Ultimately on March 9, 1972, he returned the letter with an endorsement that the address was avoiding to take delivery of notice. In that notice, the plaintiff called upon the defendant to vacate the premises by March 22, 1972. The Lower Appellate Court held that the endorsement "avoiding to take delivery" did not amount to refusal to receive the notice. Therefore, it was held that there was no valid service of notice.

Under Section 114 of the Indian Evidence Act, the presumption would be that a letter posted by the sender would reach the addressee in usual course. Once a letter has been delivered to the Post Office, it is presumed to have been delivered to the addressee under Section 27 of the General Clauses Act. There is no dispute that Ex. A-4 registered letter was delivered to the Post Office on February 25, 1972 for the purpose of service to the addressee (defendant). It was returned with an endorsement dated March 9, 1972 that the defendant had been "avoiding to take delivery."

45. The Apex Court in *Madan and Company Vs. Wazir Jaivir Chand* [], had an occasion to decide the similar question and held as follows:

"....., But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for sometime, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone, or to deliver them to some other person authorized by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the word "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by the tenant."

46. On the strength of these decisions, this Court in *Ravi Raghuramayya*, 2004 (4) ALT 526, concluded that notice is deemed to have been served when it was returned with an endorsement "avoiding service" or "left".

47. In *Vijay Kumar Vs. Vijay Laxmi and others* 2007 (6) SCC 555, High Court of Himachal Pradesh at Shimla had an occasion to decide a similar question and held that when a notice was sent by registered post, a presumption of service under Section 27 of the Act of 1897 and under Section 114(f) of the Act of 1872 shall be drawn that the notice is deemed to have been served though it was returned with an endorsement "left" etc.,

48. In *Palapetty Muhammed*, 2007 (6) SCC 555, wherein the Full Bench of the Apex Court had an occasion to consider scope of Section 114 of the Act of 1872 along with Section 27 of the Act of 1897 and observed as follows:

"When Section 114 of the Evidence Act, 1872 is applied to communications sent by post, it enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the General Clauses Act, 1897 is a far stronger presumption. While Section 114 of the Evidence Act refers to a general presumption, Section 27 of the 1897 Act refers to a specific presumption."

49. In *Smt. Vandana Gulati Vs. Gurmeet Singh @ Mangal Singh*, AIR 2013 ALL 69, the Allahabad High Court reiterated the same principle.

50. In *Bachan Lal Vs. Ram Prakash*, 2015 (4) ALJ 291, the Allahabad High Court basing on various decisions of the Apex Court and other Courts had an occasion to deal with the presumptions under Sections 16 and 114 of the Act of 1872 as

well as Section 14 of the Act of 1898 and Section 27 of the Act of 1897 and held that when a registered letter was sent to the proper address, a presumption shall be drawn that the letter was deemed to be served though it was returned with an endorsement refused/addressee left/ avoiding to take delivery etc.,

51. In *Harcharan Singh Vs. Smt. Shivrani and others* , AIR 1981 SC 1284, the Full Bench of the Apex Court discussed a situation where the letter was returned with an endorsement of "refusal" and held as follows:

"7. Section 27 of the General Clauses Act, 1897 deals with the topic-"Meaning of service by post" and says that where any Central Act or Regulation authorises or requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting it by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The section thus arises a presumption of due service or proper service if the document sought to be served is sent by properly addressing, pre-paying and posting by registered post to the addressee and such presumption is raised irrespective of whether any acknowledgement due is received from the addressee or not. It is obvious that when the section raises the presumption that the service shall be deemed to have been effected it means the addressee to whom the communication is sent must be taken to have known the contents of the document sought to be served upon him without anything more. Similar presumption is raised under Illustration (f) to Section 114 of the Indian Evidence Act whereunder it is stated that the Court may presume that the common course of business has been followed in a particular case, that is to say, when a letter is sent by post by prepaying and properly addressing it the same has been received by the addressee. Undoubtedly, the presumptions both under Section 27 of the General Clauses Act as well as under Section 114 of the Evidence Act are rebuttable but in the absence of proof to the contrary the presumption of proper service or effective service on the addressee would arise....."

52. In *Miss. D. Ennis Vs. M/s. Calcutta Vyapar Pratisthan Limited and another* , AIR 1991 Cal. 152, the Division Bench of Calcutta High Court, basing on the principle laid down by the Apex Court in *Wazir Jaivir Chand* , where both *Harekrishna Vs. Hanamann* {1996 (70) Cal. WN 262} and *Surajmull Vs. Samadarshan* {, ILR (1969) 1 Cal 379} is of the view that when a notice was sent by registered post to the correct address a presumption shall be drawn that the letter was duly served.

53. In view of the law declared by the Apex Court and various High Courts and based on Sections 16 and 114 of the Act of 1872 and Section 27 of the Act of 1897 and Section 14 of Act of 1898, the Court can draw a presumption that the petitioner in this case conveniently avoided to receive notice obviously for different reasons known to him, apart from that a presumption shall be drawn both under Section 114 of the Act of 1872 and under Section 27 of the Act of

1897 as to due service since the petitioner did not leave any instructions to the postal authorities to detain the letters or to redirect the letters to any other address whether he has gone or authorising any person to receive any letters on his behalf. In such case, it is hardly difficult task for the employer bank to serve any notice on the petitioner.

54. In *Palapetty Muhammed*, 2007 (6) SCC 555, the Apex Court while considering the service of notice under the Negotiable Instruments Act, 1881 adverted to Section 27 of the Act of 1897 and Section 114 illustration (f) of the Act of 1872 and held as follows:

"It is not necessary to aver in the complaint under Section 138 of the NI Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice un-served.

When Section 114 of the Evidence Act, 1872 is applied to communications sent by post, it enables the court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the General Clauses Act, 1897 is a far stronger presumption. While Section 114 of the Evidence Act refers to a general presumption, Section 27 of the 1897 Act refers to a specific presumption.

Section 27 of the 1897 Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice un-served, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. The Supreme Court has already held that when a notice is sent by registered post and is returned with a postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed."

55. In the decision cited *supra*, interpretation of expression "giving of notice" used in clause (b) of the proviso to Section 138 of the N.I. Act came up for consideration and basing on the earlier decision of the Apex Court in *K. Bhaskaran Vs. Sankaran Vaidhyan Balan*, 1999 (7) SCC 510, it was concluded that failure on the part of the drawer to pay the amount should be within 15 days "of the receipt" of the said notice. "Giving notice" in the contest is not the same as "receipt of notice". Giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the notice to the drawer at the correct address and for the drawer to comply with Clauses (c) of the proviso.

56. In the facts of the decision referred *supra*, notice was returned with an

endorsement "avoiding to receive notice" and the Apex Court made strong comments based on D. Vinod Shivappa Vs. Nanda Belliappa , 2006 (6) SCC 456 case, which is as follows:

"Elaborately dealing with the situation where the notice could not be served on the addressee for one or the other reason, such as his non-availability at the time of delivery, or premises remaining locked on account of his having gone elsewhere etc., it was observed that if in each such case, the law is understood to mean that there has been no service of notice, it would completely defeat the very purpose of the Act. It would then be very easy for an unscrupulous and dishonest drawer of a cheque to make himself scarce for some time after issuing the cheque so that the requisite statutory notice can never be served upon him and consequently he can never be prosecuted. It was further observed that once the payee of the cheque issues notice to the drawer of the cheque, the cause of action to file a complaint arises on the expiry of the period prescribed for payment by the drawer of the cheque. If he does not file a complaint within one month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138 of the Act, his complaint gets barred by time. Thus, a person who can dodge the postman for about a month or two, or a person who can get a fake endorsement made regarding his non-availability, can successfully avoid his prosecution because the payee is bound to issue notice to him within a period of 30 days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. He is, therefore, bound to issue the notice, which may be returned with an endorsement that the addressee is not available on the given address."

57. The language used under the proviso to clause (b) and (c) to Section 138 of the Act and the language used in clause 17(a) of B.P.S. "giving of notice" to the last known address is sufficient service since nowhere clause 17(a) of B.P.S. obligated the employer-bank to serve notice when it was returned with a particular endorsement is sufficient compliance, in view of the presumption contained in various provisions referred supra. Therefore, based on principle laid down by the Apex Court in Vinod Shivappa, it can safely be inferred that the petitioner employee conveniently managed to return the letter by the postal authorities avoiding to take notice sent by the employer. Thus, he deliberately avoided service of notice to reap the consequences that have flown from such notice, issued in compliance of clause 17(a) of B.P.S.

58. Therefore, the notice sent by respondent in compliance of clause 17(a) of B.P.S. is deemed to have been served on the petitioner but he neither gave any explanation for his absence from duty, nor reported to duty within 30 days as per clause 17(a) of B.P.S. in such case, the course open to the respondent is to remove the petitioner from service as the petitioner voluntarily abandoned his services.

59. The main stress of learned counsel for the petitioner is on the ground of non-compliance of Section 17(a) of B.P.S.; except that no other ground was raised in

the entire writ petition. It is not the case of the petitioner that notices were not sent to the last known address of the petitioner but contended that he communicated his latest address in extension of leave letters; thus, he conveniently avoided to produce the letters for extension of leave disclosing the latest address to communicate with him by the respondent-bank. Thus, he avoided to receive notice in compliance of Section 17(a) of B.P.S. as he is aware of such consequences being a union leader and he was also served with similar notices on earlier occasions for his absence. If the conduct of the petitioner in toto is taken into consideration, it can safely be inferred that the petitioner conveniently avoided to receive notice issued by the respondent in compliance of clause 17(a) of B.P.S. and laid foundation to challenge his removal from the beginning. Therefore, the conduct of the petitioner is blameworthy and, in such case, this Court, while exercising power of judicial review under Article 226 of the Constitution, cannot exercise its discretion to grant relief, more particularly in a petition seeking writ of certiorari.

60. The scope of judicial review under Article 226 is limited and when a disputed fact of giving notice to the last known address of the petitioner by the respondent cannot be gone into and, that apart, there is a strong presumption of due service of notice under Section 27 of the Act of 1897 so also illustration (f) of Section 114 of the Act of 1872 read with Section 16 and that apart, the endorsement on the returned registered cover is prima-facie proof of carrying the letter to the address mentioned in the letter by the postal peon. The presumption referred above, is rebuttable presumption and in a writ petition the question of adducing any evidence by the parties does not arise but such presumption can be rebutted by producing any documentary evidence. In such circumstances, at best, the course open to the petitioner is to approach the Industrial Tribunal where adducing evidence is permissible even to rebut the presumption in view of the terms and conditions under B.P.S. but instead approaching appropriate forum, the petitioner approached this Court under Article 226 claiming the relief of writ of certiorari to quash the proceedings.

61. As observed earlier, the petitioner did not approach this Court with clean hands and his conduct is blameworthy; thereby, I am not inclined to exercise discretionary power to grant the relief in this petition, while exercising power of judicial review, in view of the disputed fact and presumptions available under law about due service of notice.

62. The main endeavour of the learned counsel for the petitioner is that in view of the law laid down by the learned Single Judge of this Court referred supra, the proceedings under challenge are liable to be set-aside and in the said decision, learned single Judge of this Court did not advert to the provisions of different enactments which give rise to presumption of due service more particularly Section 27 of the Act of 1897, Sections 16 and 114 of the Act of 1872 and Section 14 of the Act of 1898; however, the Division Bench of this Court took a different view though a notice was returned with an endorsement "left",

publication of notice in a paper is sufficient. No doubt, in the present facts of the case, notice under clause 17(a) of B.P.S. was not published but still in view of the presumptions contained in various provisions of law, a notice is deemed to be served as the petitioner conveniently avoided to receive notice. Therefore, the principle laid down in the above decision cannot be applied to the present facts of the case in view of the law declared by the Apex Court and persuaded by decisions of other Courts referred supra; hence, I find no substance in the contention of learned counsel for the petitioner and consequently the petitioner is not entitled to claim any relief in the present petition as the petitioner himself has voluntarily abandoned his services in the respondent-bank. Accordingly, the point is answered in favour of the respondent and against the petitioner. Therefore, I find that the writ petition is devoid of merits and it deserves to be dismissed.

63. Accordingly, the Writ Petition is dismissed.

64. In consequence, miscellaneous petitions, if any, pending in this Writ Petition shall stand dismissed. No order as to costs.