

(2016) 02 KAR CK 0154

In the Karnataka High Court

Case No : Writ Petition No. 5250 of 2012 (L-TER)

P.S. Jayashree

APPELLANT

Vs

ING Vysya Bank Limited, Bangalore and another

RESPONDENT

Date of Decision : 12-02-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(d), 10(2-A)

Citation : (2016) 2 AirKarR 617 : (2016) 3 CLR 43 : (2016) 149 FLR 853 :
(2016) 2 KantLJ 665 : (2016) 3 KCCR 242 : (2016) LIC 3340 : (2016) 3 LLN 397

Hon'ble Judges : S. Sujatha, J.

Bench : Single Bench

Advocate : Zeba Nehar for C. Gowrishankar, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

S. Sujatha, J. - This petition is directed against the Award dated 10-12-2010 in C.K. No. 11 of 2006 whereby the Central Government Industrial Tribunal-cum-Labour Court (`Tribunal" for short) has rejected the reference made by the petitioner under Section 10(2-A) and 10(l)(d) of the Industrial Disputes Act, 1947 (the "Act", for short).

2. The brief facts of the case are. -

That the petitioner was taken as a `Trainee" in the respondent-Bank by order dated 14-11-1978 and after her successful training in clerical duties, she was placed on probation by an order dated 25-9-1979 on monthly salary of Rs. 190/- with effect from 1-7-1979 for the post of clerk and was requested to attend the duties of Shroff in exigencies which was in accordance with the rules of the probationary scheme. The petitioner was working as a `Clerk" at Mangalore Branch of the respondent No. 1-Bank and was transferred to Zone-I, Corporate Office, Bangalore by order dated 19-7-1996. Pursuant to the said order, she was relieved from Mangalore Branch on 10-8-1996 with instructions to report immediately for duty at Bangalore. It transpires that on the same day, another

transfer order was issued by the Senior Manager requesting the petitioner to report to duty in the Accounts Department, Corporate Office at Dhondusa Complex, Bangalore, as a Receptionist-cum-Telephone Operator. Pursuant to this Order, the petitioner has reported to the Corporate Office at Dhondusa Complex, Bangalore, on 19-8-1996. But, immediately, she remained absent from 20-8-1996. First charge-sheet was issued for unauthorised absence from 20-8-1996 to 30-11-1996. Another charge-sheet dated 24-12-1997 was issued for unauthorised absence for the period from 1-12-1996 to 15-11-1997 and third charge-sheet was issued for the period 16-11-1997 to 14-3-2002. On the charges of unauthorised absence levelled against her, the enquiry was conducted and the report was placed before the Disciplinary Authority. The Disciplinary Authority, appreciating the evidence placed on record, passed an order of dismissal. This order of dismissal was challenged by the petitioner before the Tribunal. The Tribunal elaborately considering the evidence available on record, rejected the reference, confirming the order of the Disciplinary Authority, imposing punishment of dismissal on the workman with effect from 19-11-2002 as legal and justified.

3. Being aggrieved by the said order of the Tribunal, the petitioner is before this Court.

4. Heard the learned Counsel for the parties and perused the material on record.

5. Learned Counsel appearing for the petitioner would contend that though the petitioner has filed reply to the first charge-sheet and she has requested to provide payment of salary or subsistence allowance, without which the enquiry would be illegal, no salary or subsistence allowance was paid and as such enquiry held by the Disciplinary Authority is illegal. Further, it is contended that she was originally appointed in the post of 'Clerk' and subsequently she was transferred from Mangalore to Bangalore as 'Telephone Operator' and that post of Telephone Operator was not available at Bangalore office where she was transferred. In such circumstances, she was not able to attend the work and this has been misconstrued by the respondent as unauthorised absence and there was no occasion for the Bank to issue three charge-sheets levelling charges of unauthorised absence which was not due to any default on the part of the petitioner but was only due to non-providing of the work as a 'Clerk' to the petitioner. Further, learned Counsel would also contend that the contentions raised by the petitioner in the claim statement is not considered by the Tribunal while rejecting the reference.

6. Per contra, learned Counsel for the respondents supports the order passed by the Tribunal and seeks for dismissal of the writ petition.

7. Having heard the learned Counsel for the parties and perused the material on record, the only question that arises for consideration before this Court is whether the Tribunal is justified in rejecting the reference made by the workman-petitioner confirming the order of the Disciplinary Authority imposing penalty of

dismissal with effect from 19-11-2002?

8. The undisputed facts are that the petitioner was appointed as a 'Probationary Clerk' vide order dated 14-11-1978 and after completion of the training, she was confirmed as 'Clerk' on monthly salary of Rs. 190/- with effect from 1-7-1979 and by Order dated 10-8-1996 she was transferred to Zone-I, Corporate Office, Bangalore as 'Receptionist-cum-Telephone Operator', pursuant to which, the petitioner reported to duty on 19-8-1996 and remained absent from 20-8-1996. Neither any request or any representation is made by the petitioner to place her in the post of 'Clerk' nor she has reported to work on protest if, there was any change in work condition as per the appointment order. No efforts are made by the petitioner to set right the same except remaining absent on her own volition. Such action of the petitioner taking a self decision to remain absent continuously, immediately after reporting to work as Receptionist-cum-Telephone Operator from 19-8-1996 to 19-11-2002 without any plausible explanation or reason amounts to unauthorised absence. The enquiry proceedings were conducted in accordance with law and the Disciplinary Authority has elaborately examined the evidence available on record before passing the order of dismissal. The contention of the learned Counsel for the petitioner that there is violation of principles of natural justice, as no proper enquiry has been done, no subsistence allowance or salary has been paid to the petitioner to participate in the proceedings is not an acceptable proposition at this length of time. Adequate opportunity was provided to the petitioner and in fact she has participated in the enquiry proceedings. Such being the factual matrix, now the argument advanced by the petitioner that the enquiry proceedings are vitiated for want of sufficient opportunity to the petitioner is not worthy of acceptance.

9. The contention that the grounds raised in the claim petition are not considered by the Tribunal has no merit. If the petitioner has raised certain grounds and the same are not considered, the proper course would have been to take appropriate steps before the Tribunal and not to make any complaint against the Tribunal in the writ petition proceedings. It is also noticed that three charge-sheets were issued to the petitioner and at the first instance, it was only a warning given and second time, an order of punishment was imposed giving reduction in two years basic pay and even though the order was served on the petitioner with the memo to report for duty, the petitioner was not serious in attending to the work nor made any representation/request to challenge the said order of punishment. It is only after third charge-sheet was issued and the charges levelled against her were proved, the Disciplinary Authority has taken the decision to pass an order of dismissal which is in accordance with law. The conduct of the petitioner in immediately not responding to the penalty imposed on the first two charge-sheets also adds to the fact that she was not interested to work with the respondent No. 1-Bank. In such circumstances, the Disciplinary Authority has passed the dismissal order which is just and proper. The same is extensively considered by the Tribunal and the reference as rejected after proper appreciation of facts and law. The order passed by the Tribunal does not call for

any interference by this Court.

10. Accordingly, writ petition stands dismissed as devoid of merits.