
(1999) 05 DEL CK 0027

In the Delhi High Court

Case No : Letters Patent Appeal No.27 of 1999

Punjab and Sind Bank

APPELLANT

Vs

Ashok K. Aggarwal and Others

RESPONDENT

Date of Decision : 24-05-1999

Acts Referred:

Citation : (1999) 4 AD 203 : (1999) 80 DLT 517 : (2000) 1 LLJ 447

Hon'ble Judges : Manmohan Sarin, J;Arun Kumar, J

Bench : Division Bench

Advocate : Mr. Jagat Arora, for the Appellant; Mr. Ashok K. Aggarwal, for the Respondent

Judgement

Manmohan Sarin, J.—The appellant Bank is aggrieved by the order/judgment dated 28th October, 1998, by which the learned Single Judge allowed the writ petition and directed the appellant Bank to calculate the amounts as per the details given by respondent No.1, petitioner in the writ petition, and pay to him the amounts due on or before 30th December, 1998.

2. The grievance of respondent No.1 in the writ petition was that despite the acceptance of his resignation and his being relieved from service w.e.f. 20th March, 1995, he had not been paid provident fund, gratuity and other amounts due to him. The appellant Bank had contended before the learned Single Judge that respondent No.1 had not completed the requisite period of service for being entitled to the benefits of gratuity and the contribution on provident fund. It was further contended that the appellant Bank was entitled to deduct three months salary in lieu of the notice period as per the terms of appointment and the rules.

3. It would be appropriate, at this stage, to set out the relevant facts in brief:-

(i) The respondent No.1 was employed as an officer with Bank of India, in Grade II scale since 1983. The respondent No.1 came on deputation to the appellant Bank in September, 1989 as Senior Manager (Industrial Relations) from the Bank of India. After three years, the period of deputation was further extended by

another two years. On 19th July, 1993, an offer of appointment setting out the terms and conditions was issued to respondent No.1 and accepted by him. Respondent No.1 also tendered his resignation from the Bank of India and assumed charge as Chief Manager (Industrial Relations and Industrial Law) in Grade IV with the appellant Bank.

(ii) Respondent No.1 continued to serve the appellant bank till his resignation in September, 1995. The resignation was accepted by the appellant Bank vide a letter dated 16th September, 1995, subject to deduction of salary for the notice period and surrender of the appellant Bank's car, leased accommodation, etc. Respondent No.1 made a representation on 23rd September, 1995 for waiver of the notice period. The appellant Bank relieved the respondent No.1 from the services w.e.f. 23rd September, 1995.

4. The contention of the appellant Bank is that respondent No.1 had entered his resignation from the Bank of India and his appointment with the appellant Bank was a fresh appointment, as is evident from the appointment letter, where a probation period was also prescribed. It is further claimed that respondent No.1 did not complete the period of 10 years continuous service, for being eligible to the grant of gratuity, and 5 years for being eligible to receive the contribution for provident fund. Learned counsel for the appellant submitted that there was no provision for absorbing a deputationist in service. All appointments were through the Banking Services Recruitment Board.

5. The respondent No.1 on the other hand has contended that his case was one of absorption by appellant bank with continuity of service. Respondent No.1 contends that appellant bank was highly impressed and satisfied with his work. The deputation period was got extended by two years, pending absorption through the Banking Services Recruitment Board. It is claimed that the appointment letter was merely formal in nature. The provident Fund and gratuity lying to the respondent's credit with Bank of India were transferred to the appellant Bank.

6. The first question, Therefore, to be considered is whether this is a case of continuity of service and absorption of respondent No.1 by the appellant Bank or a fresh appointment? In case of the former, the services rendered by respondent No.1 with Bank of India would be reckoned and consequently the respondent would be eligible for the benefits of gratuity and employee's contribution to the Provident Fund. Secondly, whether the appellant had waived the notice period of three months or not? In case the answer is in the negative, whether appellant was entitled to deduct the said amount from the amounts payable to respondent No.1?

7. The learned Single Judge in the impugned judgment reached the conclusion that this was a case of continuity of service and absorption by the appellant Bank.

8. We have heard the learned counsel for the appellant and the respondent No.1 in person and examined the record produced before us. There is sufficient

material on record to justify the conclusion reached by the learned Single Judge that this was a case of continuity of service despite a fresh formal appointment letter having been issued. In fact, the appellant Bank itself has treated this to be a case of continuity of service. Respondent No.1, undoubtedly, had served the appellant Bank without any interruption from the initial date of deputation i.e. 1st September, 1989 till his resignation in September, 1995. The appointment of respondent No.1 was through the Banking Services Recruitment Board and was done in a manner so as to ensure continuity of previous service with the Bank of India and ultimate absorption by appellant bank. The appellant bank had extended all regular benefits to respondent No.1 as available to its existing employees having continuity of service. These included:

- (i) benefit of accumulated leave of Bank of India;
- (ii) benefit of Leave Fare/Travel Concession in continuation;
- (iii) benefit of leave-encashment for previously accumulated leave balance with Bank of India from time to time;
- (iv) Perquisites leased accommodation;
- (v) Use of official car;
- (vi) Medical benefits;
- (vii) Pantry and Entertainment benefits in Continuity;
- (viii) Undertaking loan liabilities from Bank of India;
- (ix) Transfer of Provident Fund balance standing to the credit of Respondent with Bank of India separately showing employer contribution and employee contribution;
- (x) Payment of Attendance Allowance (which was payable only to those officers of the Appellant Bank drawing the same as on 24.9.92 i.e. prior to the Appointment Letter.

9. The above benefits were available only to the regular employees of the appellant Bank, who had requisite number of years of service and not to the employees, who had been freshly recruited through the Banking Services Recruitment Board. The aforesaid actions and conduct on the part of the Bank demonstrate the continuity of service as recognised by the appellant Bank. While approving the leave application of the respondent No.1, the concerned official of the appellant Bank had noted as under:-

"Discussed with G.M. (Personnel). Benefits of all leaves and LTC of past services available to credit is allowed in continuity on absorption in Bank."

It would be seen from the foregoing that respondent No.1 was extended all benefits of his previous service with Bank of India, commencing from 18th May, 1983, notwithstanding the appointment letter issued to him by the appellant

Bank on 19th July, 1993. We find from the record that it was a conscious decision of the appellant Bank after deliberations and seeking legal advice, to grant benefit of continuity in service. In these circumstances, we are of the view that the conclusion reached by the learned Single Judge that this was treated by appellant as a case of continuity of service cannot be faulted with. The appellant Bank cannot now be permitted to deny the benefits to respondent No.1 on the ground that he did not complete the requisite number of years of service and was ineligible to the gratuity and provident fund.

10. Coming to the question of deduction of salary for the notice period from respondent No.1's dues of provident fund, the relevant correspondence in this regard may be noted:

Respondent No.1 while tendering his resignation on 11th September, 1995 requested for remission of the notice period of three months. The appellant Bank in reply vide its letter dated 16th September, 1995 stated that the resignation has been accepted subject to payment of salary of remaining notice period out of terminal dues, adjustment of outstanding liabilities or submission of a letter of set off and surrendering Bank's car, telephone and leased accommodation, etc. Respondent No.1 vide his letter of 23rd September, 1995 thanked the appellant Bank for acceptance of his resignation and submitted that the provident fund and gratuity were sufficient to meet the outstanding liabilities. Respondent No.1 undertook to vacate the leased premises on or before the expiry of lease period and to continue to pay the rent to the Bank. As regards the notice period, the respondent No.1 stated as under:-

"I would also request you to waive your claim of the salary of remaining notice period as stipulated in your letter as the same is neither in consonance with Service Rules nor justified in the facts and circumstances nor is having regard to my excellent performance with the Bank."

The appellant Bank on the same day sent a communication bearing No.2278/95 dated 23rd September, 1995 to the following effect:-

"On acceptance of your resignation dated 11th September, 1995, you are relieved from the service of the Bank on close of office hours.

No Dues Certificate shall be issued to you on settlement of accounts.

We wish you good luck."

The respondent in view of the foregoing submits, that the appellant had accepted the respondent's request for remission of the notice period contained in its letter of 11th September, 1995 and repeated in the letter dated 23rd September, 1995 and he was relieved w.e.f. 23rd September, 1995 itself. Besides, respondent No.1 contends that under the Rule 20 (2), appellant Bank has only the power to reduce/remit the requirement of notice period. Rule 20 (2) is reproduced as under:-

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 regulation. Provided further that the Competent Authority may reduce the period of 3 months or remit the requirement of notice.

There was no power to appropriate or adjust the said amount from the benefits such as provident fund payable to the respondent. On the contrary, there is a prohibition against appropriating or adjusting the amounts lying to the employee's credit in the provident fund. We find merit in these submissions.

11. In view of the foregoing discussion, we find that no ground is made out for interference with the conclusions reached by the learned Single Judge.

The appeal has no merit and is dismissed.