
(2008) 09 PAT CK 0050

In the Patna High Court

Ram Chandra Mahaseth (since dead) Veena Devi @ Veena
Mahaseth and Others

APPELLANT

Vs

The State Bank of India and Others

RESPONDENT

Date of Decision : 15-09-2008

Acts Referred:

Citation : (2008) 09 PAT CK 0050

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, J.—Interlocutory Application No. 1478 of 2005 has been filed for substitution of the sole petitioner who died on 15.12.2004 leaving behind three legal heirs who are indicated in paragraph-1 of the I.A. The interlocutory application is allowed. The persons indicated in paragraph -1 (i) to (iii) be substituted in place of the present petitioner.

The writ application in question was filed challenging the order dated 22.8.1994. By virtue of this order in terms of the Rule 40(3) of the State Bank of India Service Rules the unauthorized absence of the petitioner was treated to be one of voluntary abandonment from service as would be apparent from the order contained in annexure-1. Petitioner was absent from duty unauthorizedly since 6.5.1994. Several notices thereafter came to be issued to him which were accepted and acknowledged by the then petitioner but he did not report for work nor did he furnish any information of his unwellness which could be considered by concerned authority. The petitioner thereafter filed an appeal against the order contained in annexure-1. The appeal has been considered by the appellate authority who was Deputy Managing Director and by a detailed speaking order dated 10.5.1996 rejected the appeal of the petitioner. The order in question is contained in annexure-2.

2. Petitioner therefore challenges both the orders in question on several grounds.

Some of them are that in terms of Rule 40(3) when an officer absents himself for a period of ninety days or more without due authority or sanction of leave it is incumbent upon the Bank to give notice to the officer on the last available address, to report for duty within thirty days. If he does not report for duty within the stipulated time it would be treated to be a voluntary vacation of employment on the expiry of the said period of notice. An appeal is maintainable against such an order if it is passed and the appellate authority must satisfy that the officer was prevented by sickness or incapacity from reporting for duty within the prescribed period. According to the petitioner the notices issued to him did not follow the prescribed time frame laid down under Rule 40(3). He does not deny that some notices were issued to him as contained in annexures 6 and 6/A. But a perusal of the said notices would show that instead of mandatory thirty days period for reporting for duty on every occasion only three days time was granted for reporting back to duty. In other words the respondents themselves had not complied with the requirement of Rule 40(3). Petitioner's case is that he was a victim of unfortunate development on his personal front and many calamities had wounded him which forced him to absent from duty and it was not a conscious decision on his part not to shoulder his responsibility of office. There were compelling circumstances available.

3. In the counter affidavit the respondents have justified the action taken by the management in the facts of the case that the present act of the petitioner's unauthorized absence was not the only instance of its kind. Despite the petitioner holding the responsible post, in the managerial capacity as Branch Manager right from November, 1979 till January, 1984 he had absented himself on many occasions. The respondent had been indulgent enough. On one occasion after a departmental proceeding, penalty of withholding of promotion of one year was also inflicted upon him. But it did not help the situation because again from July, 1993 to February, 1994 there were many instances of unauthorized absence and the absence of the Branch Manager without permission or information created administrative problem for the bank.

4. The Court has gone through the order contained in annexure-2 which is an order passed in appeal. The entire background of the present decision making has been truly reflected in the order passed by the appellate authority. The appellate authority has considered the so called compelling circumstances under which the petitioner had been absenting himself but then the appellate authority in paragraph 4(ii) of the order has also categorically recorded that all the notices which were served by the Bank upon the petitioner he had signed the acknowledgment card with full signature on 25.6.1994, 7.7.1994 and 14.7.1994. If he was really suffering from paralytic attack since May, 94 and was prevented from making leave application then he would not have put his full signature as acknowledgement to the letters in question. Petitioner continued to ignore the various communications from the Bank and that was the sufficient indication about the intents and the commitment of the petitioner to shoulder the responsibility of the post which he was holding all along. In fact, it is silence of

the petitioner coupled with inaction on his part which has led to passing of the order in question.

5. In the totality of the circumstances therefore, as taken note of by the appellate authority as well as noticed by the Court in the earlier part of the order it reaches a conclusion that the respondents have done no wrong by invoking the power under Rule 40(3). The Court does not feel that a case for interference has been made out. However, keeping the present factual position that the writ application has been finally heard and decided only now after more than a decade, a direction is issued upon the respondents that they shall deliver the legal dues and entitlement of the petitioner pursuant to the order contained in annexure-1 in favour of the legal heirs who have been brought on record now. If the three months' pay has not been recovered by the respondents during his life time the same will not be insisted by them from the legal heirs. Since it is an old litigation let all the legal payments of the deceased employees be made to the legal heirs at the earliest preferably within a period of three months from the date of communication or production of a copy of this order if not done so already.

6. This writ application is allowed to the limited extent indicated above. There will however be no order as to cost.