
(2011) 10 RAJ CK 0018
In the Rajasthan High Court
Case No : CWP No. 1753 of 1995

Ram Singh Meena

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 11-10-2011

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2012) 132 FLR 380 : (2012) LLR 140 : (2012) 1 RLW 972

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant petition is basically directed against order dt. 15/7/1991 passed by respondent Bank in exercise of powers under Cl. 17(a) of the Bi-Partite Settlement dt. 10/4/1989 holding that the employee (petitioner) having remained absent from duty and despite notice, never came across with any explanation for his absence for the period in question satisfying the Management of the Bank; it was deemed that the employee has voluntarily retired from Bank service - decision whereof was communicated to the employee through registered post AD.

2. Representation filed by the employee on 1.9.1994 (Ann. 3) giving alleged justification came to be rejected vide order dated 9.12.1994 (Ann.4), which has been assailed herein.

3. As alleged, petitioner was initially appointed as Accounts Clerk through selection by Bank Service Recruitment Board vide order dt. 13.5.1983 pursuant to which he joined on 24.5.1983 and thereafter was confirmed on 24/11/1983 and transferred to the Regional Office of the Bank at Jaipur on 15/06/1990, and while serving there, he proceeded on leave from 23.2.1991 though submitted application but without seeking prior permission to leave head quarter and did not turn up thereafter and as a consequence thereof, notice was sent on

30.6.1991 which was duly served upon him but since he did not send reply to the notice, respondent Bank considered it to be voluntarily cessation of service on the part of petitioner, and in exercise of powers U/ Cl. 17(a) of the Bipartite settlement dt.10/4/1989 took decision regarding his voluntary retirement while passing order dt.15/7/1991 sent by registered post A/D.

4. However, the petitioner alleged that he reported back for duty on 17/08/1991 and there after made presentation on 01/09/1994 regarding reconsideration of the decision of the Bank for his alleged voluntary cessation of Bank service, which came to be rejected vide communication dt. 09/12/1994 (Ann.4). It is relevant to record that there is nothing on record to support as to when he reported back for duty.

5. The fact referred to in the rejoinder is that the petitioner was sick as is evident from fitness certificate dt.07/08/1991 (Ann.7) issued by Govt. doctor. Instant petition has been filed after representation made by petitioner on 01/09/1994 came to be rejected by respondent Bank vide order dt.09/12/1994 (Ann.4).

6. Counsel for petitioner submits that petitioner sent leave applications & reminders from time to time but had not retained their office copies while sending them under posting certificates (UPC); and once his explanation having come on record, may not be satisfactory but still respondent Bank was under obligation to hold inquiry - in absence whereof, very action impugned is bad in law being in violation of principles of natural justice since he has been deprived of his livelihood on account of illegal action of respondent-Bank and the decision taken by respondent-Bank for his voluntary cessation of service in exercise of powers under Cl.17(a) of Bipartite Settlement dt.10/04/1989 is wholly arbitrary and being in violation of Art. 21 of the Constitution deserves to be quashed.

7. Counsel further submits that the petitioner's wife died leaving behind three months old daughter on 8/12/1986 and there was none in his family to look after the infant child after death of her mother and because of aforesaid reasons, he too was mentally disturbed and proceeded on leave on various dates and in such circumstances, it was expected from the authority to have considered explanation which he later on submitted, but that has been arbitrarily rejected vide order dt:09/12/1994.

8. No one has appeared on behalf of respondent Bank. However, reply to writ petition has been filed and it has been Inter-alia averred that the petitioner proceeded on leave submitting application only for three days on 23/02/1991 without prior permission to leave head quarters and his whereabouts thereafter were not known and that being the reason, notice dt. 10-13/06/1991 (Ann.R/1) was served upon him and but since he did not turn up and no explanation was submitted by him, respondent Bank in exercise of powers under Clause 17(a) of Bipartite Settlement dt.10/04/1989 took decision of his voluntary cessation of service which was communicated and sent by registered post on 15/07/1991 (Ann.R/2) and despite the petitioner being aware of his voluntary cessation of

service, he submitted application on 01/09/1994 (Ann.3) which too was considered and rejected vide order dt. 09/12/1994 (Ann.4) assigning reasons and the action being in conformity with the Bipartite settlement does not call for interference.

9. Alongwith reply filed by respondent Bank certain documents were placed to show that after notice dt.10-13/06/1991 through regd. Post (Ann.R/1) being served upon petitioner, order was passed on 15/07/1991 (Ann. R/2) regarding voluntary cessation of service of petitioner in terms of Cl.17(a) of Bipartite Settlement dt. 10/04/1989 and that came to be served upon him; in rejoinder, the petitioner has tried to come out with defence that various applications were sent by him - office copies whereof were not retained but its under posting certificates (Ann.5 to 12) of various dates are annexed, which appear to be unreliable and that apart, from such UPCs, it cannot be presumed as to what was the material which he sent through UPCs either his leave application or reply to the notices served giving explanation. What has been alleged in rejoinder is that he has not retained copies of leave application/representations alleged to have been sent under these UPCs.

10. However, vide order dt.23/02/2010, this Court directed respondent's Counsel to place relevant material on record since what has been contended by petitioner and respondent-Bank does not disclose complete material which may enable the Court to decide the controversy raised herein.

11. It is relevant to record that apart from notice dt.13/06/1991 & order dt.15/07/1991 (Ann.R/1 & R/2), documents (Ann. MA/1 to MA/4) have been placed by respondent-Bank on record alongwith application (23757/dt.06/09/2005) and other documents (Ann. MA/5 to MA/13) alongwith application (No. 19755/dt.26/04/1020) produced pursuant to order dt.23/02/2010 to show that apart from delinquency of unauthorised absence impugned, action was taken against him even prior thereto while he allegedly remained willfully absent from duty on various dates Including from January, 1987 to 21/05/1987 and thereafter from 01/11/1987 to 30/11/1987; from 01/12/1987 to 04/12/1987 and from 02/01/1988 to 29/03/1988, for which show cause notices dt. 27/05/1987 (Ann.MA/12) & dt.01/02/1988 was also served upon him, to which reply dt.22/04/1988 was sent and his explanation was found to be unsatisfactory and finally show cause notice dt. 227/08/1988 (Ann.MA/7) was served upon him. Another notice dt.01/02/1991 (Ann.MA/8) was also served for unauthroised absence on various dates including from 03/08/1990 to 19/12/1990 and from 03/01/1991 from which date he did not turn up and regarding unauthorized leave period since his entry into Bank service, he was also served with separate notice dt.29/04/1991 (Ann.MA/1) - copy of which has been placed on record to show his past conduct.

12. This Court has considered contentions advanced at the Bar and examined material on record. This fact remains uncontroverted that the petitioner proceeded on leave merely by submitting application initially for three days on

23/02/1991; and left head quarter without prior permission and did not turn up thereafter and regarding applications which he has alleged in rejoinder, sent through under posting certificates - copies of UPCs placed on record are of least credence and neither application nor his explanation are placed on record if any sent and taking lame excuse that he did not retain those copies of what were sent by him through under posting certificate, nothing is borne out. However, ultimate facts remains that there is nothing on record either regarding applications, if any being submitted in regard to his alleged willful absence from duty or reply to the notices served upon him, if any.

13. At this stage, it is relevant to quote Cl.17 of Bipartite Settlement ad infra:

17. Voluntary Cessation of employment by the Employees.--The earlier provisions 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 days or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond period of leave sanctioned originally/subsequently or when there is satisfactory evidence that he has taken/employment in India or when 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 notice, stating Inter-alla the grounds for coming to the conclusion that the employee had 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 Bank's 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 of the date of expiry of the aforesaid notice without prejudice to the bank's right to take action under the law or rules of service.

14. From Cl.17 (supra) it clearly emerges that person who deliberately does not join office and leaves the Office without any satisfactory explanation. To meet out such contingency, it is always open for the employer to resort to Cl. 17(a) of Bipartite settlement and it provides that if an employee absents himself from work for 90 days or more consecutive days without submitting an application for leave on his credit or beyond leave period sanctioned and on receipt of the notice contemplated therein the employee himself either must report for duty within 30 days or give an explanation of his alleged absence satisfying the Bank that he has not taken up another employment or a vocation and he has intention of joining duties, he may be deemed to have voluntarily retired from Bank's service on expiry of such notice and that being so, it is only when the employee concerned fails to report for duty and failed to submit explanation satisfying the

Bank in regard to his alleged absence, by legal fiction the employee shall be deemed to have been voluntarily relieved from service in view of Cl. 17(a) of Bipartite Settlement.

15. It appears that provision (supra) has been intentionally inducted in the Bipartite settlement to maintain discipline in the administration and if person deliberately did not join the office and left the office without any satisfactory explanation, it is always open for the employer/Bank to resort to Cl.17 of Bipartite Settlement.

16. However it is relevant to record that if employee submits its reply to the notice and came out with explanation, which might not be reasonable or satisfactory to the Bank, in such circumstances, it appears to be necessary for the Bank to hold inquiry before passing final order.

17. In the Instant case, indisputably, petitioner proceeded on leave without prior permission on 23.2.1991 and registered notice was sent & duly served upon him on 13.6.1991 - In response to which, neither petitioner reported for duty nor submitted any explanation and after expiry of 30 days notice, he did not turn up and only thereafter the decision was taken by respondent-Bank regarding voluntary cessation of service by the employee, in exercise of powers under Cl.17(a) of Bipartite settlement dt.10/04/1989 vide order dt. 15/07/1991 sent by registered post on his last address available notified by him. In the opinion of this Court, decision making process being adopted by respondent-Bank In taking action impugned against petitioner is in conformity with the Bipartite settlement and does not call for interference.

18. Submission made by Counsel for the petitioner that the inquiry was not held and opportunity of hearing was not afforded is wholly without substance for the reason that once a notice was served upon him, he neither turned up nor reported for duty nor submitted his explanation satisfying the Bank, in absence whereof, there was no occasion for the Bank to hold domestic inquiry and Bipartite settlement is binding upon parties and Cl.17(a) of the Bipartite settlement was duly complied with while staking impugned decision.

19. Consequently, writ petition fails and is hereby dismissed. No costs.