(1992) 12 MP CK 0021

In the Madhya Pradesh High Court

Case No : S.A. No. 278 of 1991

Rewa Sidhi Gramin Bank and Others — APPELLANT

Vs

Rejendra Prasad Saxena — RESPONDENT

Date of Decision : 15-12-1992

Acts Referred:
Rewa Sidhi Gramin Bank (Staff) Service Regulations, 1980 — Regulation 10

Citation : (1993) ILR (MP) 165 : (1993) 2 LLJ 399 : (1993) 1 MPJR 365 : (1993) 38 MPLJ 209 : (1993) MPLJ 209

Hon'ble Judges : K.L. Issrani, J

Bench : Single Bench

Advocate : R.N. Singh, for the Appellant; R.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

K.L.Issrani,J.

The present appeal arises out of the judgment and decree dated March 8, 1991 passed by the District Judge, Rewa, in Civil Appeal No. 30-A of 1990 reversing the judgment and decree dated January 12, 1990, passed by Second Civil Judge, Class II, Rewa, in Civil Suit No. 134-A/89.

The plaintiff-respondent was working as Branch Manager of Rewa Sidhi Gramin Bank, a bank incorporated under Regional Rural Banks Act, 1976. On November 22, 1982 he submitted his resignation (Ex.P-6) making it "effective after the expiry of three months". But it was accepted by the Chairman of the Bank on November 23, 1982 vide letter (Ex/.P-8) mentioning therein that "three months'' notice has been waived". Next day, i.e. on November 24, 1982 the plaintiff-respondent withdrew his resignation by letter Es. P-7 stating therein "honestly I want to continue my services and request to treat my resignation as null and void". The plaintiff-respondent again addressed his letter dated December 3, 1982 (Ex. P-11) to the Chairman of the Bank inviting his attention to the legal position that the acceptance of the resignation is "illegal" and to treat the same as cancelled. He also preferred an appeal (Ex.P9) to the Board of Directors and that was rejected in its meeting held on February 4,1983 and the decision of the Board was communicated to the plaintiff by letter dated April 1, 1983 (Ex. P-10).

According to the plaintiff-respondent his resignation could not be legally accepted before the expiry of the period of three months from November 22, 1982. On the other hand the defendants-appellants'' plea was that Regulation 10 of the Staff Service Regulations, 1980 called "Rewa Sidhi Gramin Bank (Staff) Service Regulations, 1980" (hereinafter referred to as the ''Service Regulations''), the bank could waive the notice period and in view of the matter the resignation was legally accepted on November 23, 1982. Once it having been accepted, it could not be withdrawn by the letter dated November 24, 1982 or December 3, 1982.

The trial Court upheld the plea of the defendants-appellants and dismissed the plaintiff-respondent''s suit. However, on appeal by the plaintiff-respondent, the judgment of the trial Court has been reversed by the lower appellate Court and it has been held that the resignation of the plaintiff-respondent could not be accepted before the period he has mentioned in his letter. Hence this appeal has been filed by the defendants.

This Court while admitting the appeal has framed the following substantial question of law:-

"Whether the respondent/plaintiff had law-fully withdrawn his resignation so as to entitle him to a declaration that he was continuing in employment?"

The submission of the learned counsel for the appellants-defendants is that once the resignation has been accepted it cannot be withdrawn by the respondent-plaintiff subsequently. The other submission is that under Regulation 10 of the Service Regulations, 1980 the Bank has power to waive the period of notice. Learned counsel relied on the principles laid down in Raj Kumar Vs. Union of India (UOI), Learned counsel further submits that though the writ under Article 226 of the Constitution of India for such a relief was maintainable, but the suit as filed by the respondent-plaintiff before the trial Court without paying the proper court-fee for consequential relief, was not maintainable.

Learned counsel for the plaintiff-respondent has refuted the submissions of the learned counsel for the appellants-defendants. He has placed reliance on Punjab National Bank v. P.K. Mittal, 1989-I-LLJ-368. He also submits that such type of suit is maintainable. No such objections, which are being raised now, were ever raised before,

Having heard the counsel for the parties, I am of the opinion that this appeal deserves to be dismissed.

The facts of this case are similar to the facts of the case of Punjab National Bank v. P.K. Mittal (supra). In that case reliance was placed on proviso to Clause (2) of Regulation 20 of Regulations (Punjab National Bank.) Proviso to this clause says that in a case where the employee desires that his resignation should be accepted earlier or without notice being given by him, the Bank may consider such a request and waive the period of requirement of notice if it considers it fit to do so.

To appreciate Regulation 10 of Service Regulations, 1980 applicable to this case, as shown above, it is necessary to reproduce the same, which is as under:-

"10. Termination of service by notice. (1) (a) an officer or employee shall not leave or discontinue his service in the Bank without first giving notice in writing to the Chairman of the Bank of his intention to leave or discontinue the service.

(b) The period of notice required shall be-(i) Three months in the case of officers, and

(ii) One month in the case of other employees.

(c) In case of breach by employee of the provisions of this sub-regulation, he shall be liable to pay to the bank as compensation a sum equal to his pay for the period of notice required of him.

(d) He shall also be liable to refund the pay or allowances or both, if any, drawn by him while on training and make good the training expenses, incurred by the Bank or sponsor Bank for deputing him for training.

(e) In exceptional circumstances the payment of such compensation and refund may be waived by the Chairman, at his discretion.

(2) (a) The Bank may terminate the service of an-

(i) Officer after giving him three months'' notice or pay in lieu thereof;

(ii) employee after giving him one month''s notice or pay in lieu thereof;

(b The power to terminate the service of an officer or employee shall be exercised by the Chairman.

(3) Nothing in sub-regulation (2) shall affect the right of the Bank-

(a) to retire or dismiss an officer or employee without notice or pay in lieu thereof in accordance with the provisions of Regulations II and 30; and

(b) to terminate the service of an officer or employee without notice or pay in lieu thereof on his being certified by a Medical Practitioner recognised by the Bank, to be permanently incapacitated for further continuous service in the bank."

Clause (1) (a) of Regulation 10 of the Service Regulations, 1980 requires that no officer or employee shall leave or discontinue his service without first giving notice in writing to the Chairman of the Bank of his intention to leave or discontinue the service. In the present case, the respondent-plaintiff being an officer of the Bank was admittedly required to give three months'' notice for acceptance of his resignation or as per Clause (c) he shall be liable to pay the

Bank as compensation a sum equal to his pay for the period of notice required of him. Clause (e) confers right on the Chairman to waive the payment of such compensation in exceptional circumstances.

In the present case, in the resignation letter dated November 22, 1982 (Ex.P-6), it was specifically mentioned that his resignation will be effective after three months from November 22, 1982. During that period the Bank may take any work from him anywhere. There is no request made in this resignation letter that it should either be accepted earlier or the payment of compensation may be waived, which goes to show that the intention of the plaintiff was only to resign after three months and not before that.

In Punjab National Bank Vs. P.K. Mittal, at Para 6 it has been held as under (pp.371-372):

"6. Much reliance was placed on the terms of the proviso to Clause (2) of Regulation 20 to justify the action of the Bank in terminating the respondents'' services earlier but we do not think that the proviso can be interpreted in the manner suggested by learned counsel for the bank. The resignation letter of the officer has to give at least three months'' advance notice under the main part of the clause. What the proviso contemplates is that in a case where the employee desires that his resignation should be effective even before the expiry of the period of three months or without notice being given by him, the bank may consider such a request and waive the period of requirement of notice if it considers it fit to do so. That question does not arise in the present case because the employee had not requested the bank to reduce the period of notice or to waive the requirement of notice. Dr. Anand Prakash seeks to interpret the proviso as empowering the Bank, even without any request on the part of the employee, to reduce the period or waive the requirement of notice. In other words, he says the bank has power to accept the resignation with immediate effect even though the notice is only of a proposed future resignation. We do not think this contention can be accepted. As we have already mentioned, resignation is a voluntary act of an employee. He may choose to resign with immediate effect or with a notice of less than three months if the bank agrees to the same. He may also resign at the future date on the expiry or beyond the period, of three months but for this no further consent of the bank is necessary. The acceptance of the argument of Dr. Anand Prakash would mean that even though an employee might express a desire to resign from a future date, the resignation can be accepted, even without his wishes, from an earlier date. This would not be the acceptance of a resignation in the terms in which it is offered. It amounts really to forcing a date of termination on the employee other than the one he is entitled to choose under the regulations. As rightly pointed out by the High Court, the termination of service under Clause (2) becomes effective at the instance of the employee and the service of the employee cannot be terminated by the employer under this clause."

Ruling cited by the learned counsel for the appellant-defendant i.e. in Raj Kumar

Vs. Union of India (UOI), and other similar rulings have been considered by the Apex Court in para 8 of the judgment in the case of Punjab National Bank v. P.K. Mittal (supra) which is as under (pp.372-373):

8. The result of the above interpretation is that the employee continued to be in service till April 21, 1986 or June 30, 1986, on which date his services would have come normally to an end in terms of his letter dated February 21, 1986. But, by that time, he had exercised his right to withdraw the resignation. Since the withdrawal letter was written before the resignation became effective, the resignation stands withdrawn, with the result that the respondent continues to be in the service of the bank. It is true that there is no specific provisions in the regulations permitting the employee to withdraw the resignation. It is, however, not necessary that there should be any such specific rule. Until the resignation becomes effective on the terms of the letter read with Regulation 20, it is open to the employee, on general principles, to withdraw his letter of resignation. That is why, in some cases of public services, this right of withdrawal is also made subject to the permission of the employer. There is no such ; clause here. It is not necessary to labour this point further as it is well settled by the earlier decisions of this Court in Raj Kumar Vs. Union of India (UOI), Union of India v. Gopal Chandra Misra 1978 1 LLJ 492 , Balram Gupta Vs. Union of India (UOI) and Anr,

Thus, besides the Regulation 20 applicable in that case, the Apex Court has also considered general principles that until the resignation becomes effective on the terms of the fetter, it is open to the employee, on general principles, to withdraw his letter of resignation. In the present case, the intention of the plaintiff respondent was only to resign or relinquish his office after the period of three months with effect from November 22, 1982 and not earlier, He has not made any request or prayer to waive the conditions of payment of compensation pay able by him in lieu of notice period. Consequently, the resignation accepted by the Chairman of the Bank gracefully waiving the period of notice at his discretion is contrary to Regulation 10 of Service Regulations, 1980. The lower appellate Court was, therefore, right in reversing the judgment of the trial Court.

The substantial question of law framed by this Court is answered in the affirmative. The appeal is, therefore, dismissed with costs, Counsel''s fee Rs. 500.-, if certified.

