

(1999) 06 AP CK 0079

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26769 of 1998

S. Ramachandra Alse

APPELLANT

Vs

Deputy General Manager, Syndicate Bank, Hyderabad and
another

RESPONDENT

Date of Decision : 16-06-1999

Acts Referred:

Citation : (1999) 3 ALD 626 : (1999) 3 ALT 716 : (1999) 3 AnWR 178

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. T.K. Sreedhar, for the Appellant; Mr. A. Krishnam Raju, for the Respondent

Judgement

1. The petitioner joined the services of the respondent-Bank as Attender in the year 1978 and subsequently he was promoted as clerk in the year 1984. When the petitioner was so serving in the establishment of the Bank, absented himself without prior permission or sanction of leave with effect from 29-11-1996. Since the petitioner was absenting himself unauthorisedly, the Branch Manager-R2 herein issued notice dated 13-3-1997 to the petitioner calling upon him to join the duty. There was no response from the petitioner. Thereafterwards, the first respondent issued notice dated 25-3-1997 as envisaged under clause 17(a) of the Vth Bipartite Settlement by registered post acknowledgment due as well as under certificate of posting and both the notices were returned on 16-4-1997 with the postal endorsement "addressee left, returned to sender". Thereafterwards, the Deputy General Manager-first respondent passed the impugned order dated 24-6-1997 declaring that the petitioner is deemed to have voluntarily retired from the service of the Bank with effect from 16-5-1997 and further declaring that the period of unauthorised absence of the petitioner should not count for service including for the purpose of payment of gratuity/pension. Hence this writ petition assailing the validity of the impugned order of the first respondent dated 24-6-1997.

2. In the affidavit filed by the petitioner and the counter-affidavit filed by the management of the respondent-Bank many facts are stated relating to the attempt made by the petitioner to join the duty and the deliberate intention of the petitioner to abandon the duty without any justification and the previous misconduct by the petitioner. I do not think it necessary for the Court to go into those facts. After hearing the learned Counsel for the parties, I found that the impugned action suffers from an error apparent on its face.

3. The impugned action is admittedly taken under the enabling Clause 17(a) of the Vth Bipartite Settlement. Clause 17(a) reads :

"(a) When an employee absent himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/ subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the 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 notice, stating, inter alia the grounds for coming to the conclusion that the employee has 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 avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the Bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be performed to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the Bank's right to take any action under the law or rules of service."

There is no controversy between the parties that the petitioner absented himself from duty without prior sanction of the leave or information for more than 90 days. Therefore, it can safely be said that the Management of the Bank could invoke the enabling provision contained in Clause 17(a) of the Vth Bipartite Settlement and pass appropriate order. But, Clause 17(a) mandates that before the Management could declare that an employee has voluntarily abandoned the job by virtue of the fact that he absented himself unauthorisedly for a period more than 90 days, the Management is required to give a notice to the petitioner offering him an opportunity to explain under what circumstances or situation he absented himself unauthorisedly. In the instant case," admittedly notice was not served on the petitioner. The petitioner was denied of an opportunity to place his explanation for the unauthorised absence of more than 90 days. After the return of the notice dated 25-3-1997, the bank did not take any further steps to notify the petitioner by the oilier modes known to the law. The Supreme Court in Union of India and others v. Diuanath Shantaram Karekur and others, 1998 (6)

Supreme 534, dealing with a similar facts situation opined that if a notice sent to a delinquent returned unserved with a postal endorsement "not found", held that the notice so sent and returned could not legally be treated to have been served on the delinquent. In the above decision itself, the Supreme Court also opined that a single effort in sending notice to the delinquent cannot be treated as sufficient. Coming to the facts of this case, it can be said that there was absolutely no effort on the part of the Management of the Bank to notify the delinquent about its intended action and giving the employee an opportunity to have a say in the matter. It is well settled by the pronouncements of the Supreme Court and this Court that though the Constitutional validity of the provisions as contained in Clause 17(a) of Vth Bipartite Settlement could be sustained, the doctrine of fairplay in action mandates the employer to give reasonable opportunity to the unauthorisedly absenting employee to have his say in the matter. It is trite to state that under certain unavoidable circumstances and situations an employee may be forced to absent from duty unauthorisedly. Since there is clear infraction of principles of natural justice and fair play in action, a case is made out for interference. The writ petition is, therefore, allowed. The impugned declaration made by the first respondent in the proceedings dated 24-6-1997 that the petitioner has abandoned the service of the Bank voluntarily is quashed. The petitioner is entitled to all the benefits flowing from the quashing of the impugned order. However, it is made clear that this order shall not preclude the Management of the Bank to issue notice to the petitioner as envisaged under Clause 17(a) of the Vth Bipartite Settlement giving him a fair and reasonable opportunity to have a say in the matter and then take a final decision. No costs.