
(1998) 09 KAR CK 0075
In the Karnataka High Court
Case No : Writ Petition No. 12360 of 1992

Saibabu S.

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 11-09-1998

Acts Referred:

Constitution of India, 1950 — Article 12, 226

State Bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979 — Rule 92

Citation : (1999) ILR (Kar) 1306 : (1999) 3 LLJ 993

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : M. Rajanna, for the Appellant; Subramanyam and B.C. Prabhakar, for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—The petitioner who was aged about 40 years at the time of passing the peculiar order of termination by the

competent authority in exercise of his powers under Paragraph 22 of State Bank of India Officers (Determination of Terms and Conditions of

Service) Order, 1979 (in short "the Order) is before this Court seeking for issuance of a writ of certiorari to quash the same in which termination

order it has been illegally declared as he has voluntarily abandoned/voluntarily resigned from service with effect from November 5, 1990 and

further sought for a direction declaring that, he has been deemed to be in continuous service as he has never resigned or abandoned the services

urging the following legal contentions:

The petitioner belongs to ST (Kondakapu). He joined the services of the respondent Bank on December 28, 1974. He has served in the different

circles of the respondent-Bank in its different branches. He had rendered 18 years of continuous service and has got unblemished service record.

The first respondent-Bank is a premier Bank in India. It has employed 1000s of employees throughout the country and it is governed by the

provisions of the State Bank of India Act, 1955 (in short "the Act"). Therefore, it is an "Authority" under Article 12 of the Constitution of India

amenable to the writ jurisdiction under Article 226 of the Constitution. At Paragraph 4 of the Writ Petition, it is stated that, when he was working

at Bidar Branch he developed severe back pain, and he had undergone treatment from August 25, 1988 to July 15, 1989, He was in-patient in

J.B. National Hospital, Hyderabad. He also suffered from high temperature infected by malaria. Further, he also suffered from chronic appendicitis

and ultimately he had undergone operation on May 17, 1989. Further, the petitioner was transferred from Bidar Branch to Humanabad Branch.

Due to illness he could not report to Humanabad Branch for which he had sent telegrams, that he was taking treatment at Hyderabad for illness

and he would report for duty after recovery. He reported for duty on October 15, 1990 at the Humanabad Branch and worked upto November

5, 1990. When he developed temperature, the doctor advised him to take rest and accordingly petitioner sent a leave application on November 5,

1990 addressed to the Regional Manager, Hubli Branch through Branch Manager, Humanabad Branch. It is stated, petitioner received a notice on

December 18, 1990 from Humanabad Branch asking him to report for duty and give explanation for his absence. Petitioner contends that it was

falsely mentioned in the letter that petitioner did not report for duty in response to the previous notice dated October 8, 1990 even though he had

reported for duty on October 15, 1990 and worked upto November 5, 1990. It was also mentioned in that notice that if the petitioner did not

report for duty, it would be presumed that he had voluntarily abandoned duty or resigned without giving requisite notice.

2. It is contended that, when the notice was received the petitioner was seriously ill and was undergoing medical treatment. He sent telegram on

December 28, 1990 requesting for extension of sick leave. He also sent a reply letter on December 28, 1990 stating that he was prevented from

reporting to duty because he was suffering from jaundice and was treated by doctors. He has produced necessary certificate in this regard. He

further requested for extension of sick leave from March 25, 1991 .The Bank did not refuse to grant leave for the period from November 5, 1990

to June 15, 1991 till the date of filing of this petition. The Bank issued one more notice on May 3, 1991 directing the petitioner to report for duty

within three days failing which it would be presumed that he had "voluntarily abandoned his duties or resigned from service without giving notice.

The petitioner states that he had sent reply telegram to this notice on May 8, 1991 a true copy of which is also produced by the petitioner to the

effect that, that he would report for duty by the month end as his mother was hospitalised. Petitioner also telephoned to the Branch Manager,

Humanabad Branch on May 17, 1991, the Branch Manager informed him to report only to the Regional Manager, Region III, State Bank of India,

Hubli Zonal Office. The petitioner therefore went to Hubli to report for duty to the Regional Manager, Region III on June 17, 1991, but, the

Regional Manager did not give him proper hearing and asked him to put in writing whatever he wanted to say and did not permit him to report for

duty. It is further stated that, at this stage, the petitioner went to the Bank's Medical Officer on June 17, 1991 and got examined and further, the

Medical Officer issued fitness certificate. Thereafter, the petitioner received a letter dated September 24, 1991 from the Chief General Manager

stating that petitioner did not respond to the notices issued to him as referred to above,

3. The petitioner is seeking the relief on various ground particularly, the action of the respondent-Bank in presuming that the petitioner had

voluntarily abandoned his services or voluntarily resigned from his services from November 5, 1990 eventhough he has submitted medical

certificates, telegraphic and telephonic communications regarding his sickness and various requests for leave and extension of leave and not

permitting him to report for duty is manifestly illegal and malafide. The act of the Bank in presuming that the petitioner voluntarily abandoned or

voluntarily resigned is untenable unjust and unsustainable in law. Further, the action of the Bank is violative of principles of natural justice as the

Bank did not issue any show-cause notice nor conducted any enquiry for the alleged absence in accordance with the service rules of the Bank.

Thereby it had deprived the petitioner the reasonable opportunity of referring to all the leave application medical certificates, telegrams. The

petitioner prays for grant of relief on the ground that the impugned order is illegal and void.

4. A detailed counter has been filed by the respondent-Bank traversing various averments made in the Writ Petition referring to Rule 92 of the

State Bank of India (Supervisory Staff) Service Rules (in short "the Rules") stating that power has been exercised by the Bank. Various allegations

are denied, but, there is no specified denial in the counter with reference to the leave letters, extension for sick leave, telegrams and the letter dated

June 17, 1991 acknowledgment produced by the petitioner at Annexures KK and LL are not specifically denied. This circumstance further goes to

show how the respondent-Bank has taken evasive stand in controverting the averments made in the Writ Petition. This is the kind of assistance

rendered by the respondents to this Court in determining the rights of the parties. Therefore, this Court has to view the attitude of the respondent-

Bank, which is being the Nationalized Bank very seriously. Further, at paragraph 6 it is, stated with regard to Annexure FGHK and L without

making any comment with regard to those documents whether they are disputed or admitted. At paragraph 14 it is stated with regard to co-

employee had taken the petitioner to the Doctor but it is alleged that medical certificate has not been produced to that effect. At paragraph 17 of

the Court it is stated that the petitioner suppressed the fact that Humanabad Branch Manager addressed a letter to the petitioner on November 23,

1990 advising him that his leave application dated November 5, 1990 was rejected and that his absence was treated as sick leave as per his

request. The respondents have specifically stated in the counter that, no relief is admissible to the petitioner in exercise of writ jurisdiction by this

Court as the Petitioner has approached this Court with unclean hands and it is prayed that Writ Petition may be dismissed with costs.

5. Having heard the learned Counsel for the petitioner and the respondents and having perused the petition averments, the statement of objections

and the various documents produced in support of respective contentions, following points have to be considered by this Court.

(i) Whether, the order of voluntary abandonment/resignation could have been passed by the respondent-Bank in exercise of its owner under

paragraph 20(2) of the Order, 1979 and whether, respondent- Bank could have passed such an order in the absence of issuing notice of

resignation by the petitioner to the Bank expressing his willingness that, on the expiry of three months from the service of notice upon the Bank in writing,

(ii) whether impugned order be treated as either voluntary abandonment of service or voluntary resignation from the service of the Bank by the petitioner is the question required to be considered.

6. Regarding Point No. 1 it is an undisputed fact that petitioner has not tendered resignation by notice in lieu of three months' notice three months

salary was also not paid by the petitioner to the Bank. If it were to be so, what is justified on the part of the competent officer to invoke the power

under the said paragraph 20(2) of the Order, 1979 is not forthcoming in the counter. What is sought to be justified is with reference to Rule 92 of

the Rules. Admittedly, the impugned order of termination has not been passed in exercise of powers under the said Rule, The justification sought to

be made out with reference to the abovesaid Rule by the respondent-Bank cannot be permitted in view of law declared by the Apex Court in this

regard. The Apex Court in the case of Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup, in un-equivocal terms it has been laid down to the effect

that, an order of termination upon dismissal should be justified on the grounds on which the said order is passed. Admittedly, the order of

termination is passed in exercise of its power under paragraph 20(2) of the Order, 1979. Therefore, the respondent-Bank should not be allowed

to justify its action with reference to Rule 92 of the Rules. Rule 92 of the Rules is extracted hereunder for reference :

92, An employee who overstays his leave, except in circumstances beyond his control, shall not be entitled to any salary or allowance for the

period of his absence without leave and shall also be liable to forfeiture of his appointment or to any of the penalties specified in Rule 49.

To consider the issue framed and the relevant paragraphs of Order, 1979, the relevant paragraphs 20(1) and (2) of the Order, 1979 are extracted

hereunder:

Termination of service :

70(1) The Bank may terminate the services of any officer other than a Probationary Officer by giving him three months' previous notice in writing

or three months' emoluments in lieu thereof.

(2) No officer shall resign from the service of the Bank otherwise than on the expiry of three months from the service on the Bank of a notice in writing of such resignation.

Provided that Probationary Officer who has entered the service of the Bank as such shall not be entitled to give notice or leave the service of the Bank until the expiration of the stipulated period of probation and any breach of this proviso shall entitle the Bank to proceed in accordance with the provisions of sub-para (3) of paragraph 14.

Provided further that the competent authority may, at its discretion, permit an officer to resign without notice or forfeiture of security deposit, or payment in lieu of notice or may reduce the period of notice.

7. It is an undisputed fact that petitioner never tendered his resignation by issuing notice as contemplated under sub-para 2 of paragraph 20, in this view of the matter, was it permissible for the respondent-Bank to justify the order of termination in exercise of its power under paragraph 20(2) of the order of 1979 and also placing reliance under Rule 92 of Rules as contended in the counter statement for the reason that the respondent-bank has not passed an order invoking the power referring to Rule 92 of Rules as contended in the counter statement.

8. Further submission has been made by the learned Counsel placing reliance upon Rule 92 of the Appeal Rules to justify the order of termination passed against the petitioner for the reason that the Bank has not passed the impugned order in exercise of its powers under the said Rule. Therefore, it is not open for the petitioner to place reliance upon Rule 92. Hence, the contention in this regard urged by the learned Counsel for the petitioner is untenable in law.

9. This Court has examined as to whether respondent-Bank exercised its power bona fide or mala fide in view of the fact that the order is not referable to any provisions of either other of 1979 of service rules referred to above, the order cannot be termed as legal and valid.

10. With reference to the pleadings of the party and the impugned order passed by the respondent-Bank with reference to the service rules and the order of 1979 and this Court is of the view that, order is not referable to the abovesaid order and the Rules. Hence, the impugned order cannot be said that it is passed in bonafide exercise of power by the second respondent,

but the same is passed in mala fide exercise of power.

11. It is not the case of the Management that he has overstayed and further, the respondents have not considered the leave applications and the medical certificate submitted by the petitioner on June 17, 1991 and no decision was taken by the competent officer as on the date of passing the order. In this regard no record is made available by the respondent-Bank except making reference to letter dated June 17, 1991. No mention is made with regard to leave applications, telegrams except mentioning in the counter statement. In this case non-consideration of leave applications, telegrams, medical certificate sent by him referred to in the preceding paragraphs of this order clearly establish the fact that they weren't considered. Despite this fact, invoking of power by the respondent's Bank under paragraph 20(2) of Order, 1979 is bad in law as it entails serious civil consequences upon the petitioner. The stand taken by the respondent-Management that the order of termination is justifiable under Rule 92 of the Rules is not sustainable in law for the reasons stated in the preceding paragraph. Further, the order of termination passed by the respondent-Bank in exercising its power at paragraph 20(2) of the Order, 1979 is also unsustainable in law.

12. For the reasons stated in the preceding paragraphs of this order, this Court is of the view that the points No. 1 and 2 formulated by this Court cannot be termed as either voluntary abandonment or voluntary resignation by the workman.

13. Further, the power is entrusted with the competent officer who is the Chief General Manager is a trust that power should have been exercised by him for the purpose for which it is conferred upon him, if power is exercised by that Authority other than the purpose for which it is conferred upon such Authority, such exercise of power and such action of the Authority would tantamount to legal mala fides. In this regard, the Apex Court in the case of State of Punjab and Another Vs. Gurdial Singh and Others, dealing with the provisions of the Land Acquisition Act Sections 4 and 6 examining the power entrusted with the authority and considering the various aspects regarding entrustment of power has laid down the law at paragraph 9 explaining jurisprudence of law as hereunder:

The question then, is what is mala fides in the jurisprudence of power? Legal

malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power - sometimes called colourable exercise or fraud on power and often times overlaps motives, passions and satisfactions - is the attainment of ends beyond the sanctioned purposes of power by the simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the Court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated, "I repeatthat alt power is a trust that we are accountable for its exercise - that, from the people and for the people all springs, and all must exist." Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all the cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the Statute, enter the verdict or impels the action mala fides or fraud on power vitiates the acquisition or other official act.

14. The law declared by the Apex Court in the said case with reference to the facts of this case the power has been exercised by the Chief

General Manager of the respondent-Bank who is the competent authority has passed the impugned order which action of him is a colourable

exercise of power it is an arbitrary and mala fide exercise of power and the same is not exercised to attain the ends for which purpose the power is

entrusted with him particularly in the absence of resignation notice in writing required to be given by the petitioner to the respondent-Bank. In a

casual and cavalier manner, the Chief General Manager has played with the life and livelihood of the petitioner and his family members. The

purpose for which the power is entrusted with the Chief General Manager of the respondent-Bank is being misused in the instant case. Therefore,

this Court has to hold that the order of termination is not legal and valid. On the other hand, it is a colourable, mala fide and arbitrary exercise of

power by the second respondent and therefore it should not be allowed to sustain.

15. Further, submission is made by the learned Counsel appearing for the respondents relying on the Judgment of the Apex Court reported in

1997 (2) L.L.N.1007 and Judgments of this Court reported in ILR 1997 612 and ILR 1997 628 to justify their stand that the petitioner for the

reasons explained in the order of termination has voluntarily abandoned his services. The Apex Court has stated, in such circumstances, this Court

should not exercise its power under Article 226 of Constitution of India. Mr. Subramanyam, learned Counsel appearing for the respondents further

submits that this is a case of voluntary abandonment of service attracted the service order of 1979 and Service Rules. This submission of the

learned Counsel is unfounded as the same is contrary to law laid down by the Apex Court referred to above and the reliance placed on the

Judgments referred to above are misplaced for the reasons that in fact this Court has already recorded a finding that there is no voluntary

abandonment or voluntary resignation both on facts and in law and further these Judgments have no application to the facts of this case.

16. I have carefully examined both orders and the rules. There is no provision regarding voluntary abandonment of service. In my view, this is not a

case of voluntary abandonment at all. Apex Court in the case of G. T. Lad and Others Vs. Chemical and Fibres of India Ltd., has laid down the

principle that abandonment means terminating the relationship of master and the servant permanently. In the instant case, if it were to be the case of

voluntary abandonment as contended by the respondents-Bank, the petitioner would not have repeatedly sent the leave letters, medical certificates,

telegrams and the letter dated June 17, 1991 to the respondent Bank requesting for sanctioning leave on the grounds mentioned in those letters.

Hence, the submission of the learned Counsel for the Bank in this regard is rejected. On the other hand, various judgments are referred to by the

learned Counsel for the petitioner, Mr. Rajanna to substantiate the contention taken by the respondents regarding the alleged voluntary

abandonment is not legal and valid, same need not be referred to in this order as this Court has come to conclusion that, order of termination is

mala fide exercise of power having regard to the facts of this case and the impugned order passed by the Bank is not legal and valid either under

the provisions of the Orders 1979 or under the service rules referred to above.

17. Having come to the conclusion that, impugned order of the respondents is bad in law, now the question for consideration is what relief should

be granted to the petitioner keeping in view the agony and the hardship caused to the petitioner and his family members on account of his

unemployment at the instance of the second respondent. In this regard, it is appropriate to recover the damages from the person who has passed

the order of termination. The Chief General Manager of the respondent-Bank has, in a casual and cavalier manner passed the impugned order

thereby he has played with the life and livelihood of the petitioner and his family members. The competent officers who are in service of the Bank,

who are entrusted with the disciplinary power may take note of the abovesaid observations for their future guidance that they have to carefully

exercise their powers cautiously while taking disciplinary action against its officer/ employees. For the reasons stated supra this is a proper and fit

case, where this Court has to grant full backwages with interest on the amount of backwages in favour of the petitioner. Therefore, I pass the

following order:

Writ Petition is allowed. Rule made absolute. Impugned order of voluntary abandonment/ voluntary resignation of service passed by the

respondent-Bank dated September 24, 1991 (Annexure-MM) is hereby quashed. Respondent-Bank is hereby directed to re-instate the petitioner

forthwith and pay full backwages with 9% interest thereon from the date of termination. Further, respondent-Bank is directed to consider the leave

applications and medical certificates submitted by the petitioner for the period referred to in the order and dispose of the same keeping in view the

power conferred under Rule 92 of the Rules.