

(2012) 08 KAR CK 0314

In the Karnataka High Court

Case No : Writ Petition No. 32844 of 2009 (S-RES)

Shri Prashant B. Narnaware

APPELLANT

Vs

Vijaya Bank

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Contract Act, 1872 — Section 23, 27

Citation : AIR 2012 Kar 191

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : S. Vitthal Shetty, for the Appellant; Sneha Nagaraj, For M/s. Sundarswamy and Ramdas Assts., for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das

1. In this writ petition the petitioner has prayed for a writ in the nature of certiorari to quash a clause in the order of appointment dated 7.8.2007, Annexure-B, letter dated 8.8.2009, Annexure-L, letter dated 3.9.2009, Annexure-N, letter dated 6.10.2009, Annexure-Q and the indemnity bond dated 3.10.2007, Annexure-H in so far as it relates to collecting a sum of Rs. 2,00,000/- from the petitioner for breach of terms of order of appointment as damages and for a writ of mandamus to direct the respondents to refund the same. Petitioner joined the service of respondent bank on 15.11.1999 as Assistant Manager. Subsequently on 22.2.2007 petitioner was promoted to the cadre of Manager. Thereafter on 7.8.2007 petitioner was selected and posted as Senior Manager.

2. On 17.7.2009 petitioner submitted his resignation as per Annexure-K to the post of Senior Manager. On 8.8.2009 respondent bank informed the petitioner to pay a sum of Rs. 2,00,000/- for acceptance of resignation in terms of the order of appointment and also the bond executed by the petitioner. Petitioner submitted a reply requesting the respondents to waive the payment of Rs.

2,00,000/- as the same was contrary to the banking regulations and opposed to public policy. This request of the petitioner came to be rejected. Finally on 6.10.2009, the respondent bank accepted the resignation of petitioner subject to payment of Rs. 2,00,000/-. Accordingly, the petitioner made payment of Rs. 2,00,000/- and he was relieved from service on 20.10.2009. Now the petitioner is before this Court inter alia contending that the condition in the order of appointment and the bond obtained by the respondents to pay a sum of Rs. 2,00,000/- as contrary to law and banking regulations.

3. After service of notice the respondent bank entered appearance and filed statement of objections inter alia justifying their action in imposing the condition to pay a sum of Rs. 2,00,000/- and recovering the same at the time of relieving the petitioner from service.

4. Heard arguments on both the side and perused the entire writ papers.

5. It is relevant to extract the relevant clause in the recruitment notification dated 26.12.2006, Annexure-A and the same reads as under:

(w) selected candidates are required to execute an indemnity bond of Rs. 2.00 lakh (Rs. Two Lakh only) indemnifying that they will pay an amount of Rs. 2.00 lakh to the Bank if they leave the service before completion of 3 years.

6. Similar condition was imposed in the order of appointment dated 7.8.2007, Annexure-B. To this effect the respondents obtained a indemnity bond from the petitioner as per Annexure-H dated 3.10.2007. It is on the basis of this condition in the order of appointment and the indemnity bond the respondent bank insisted the petitioner to pay a sum of Rs. 2.00 lakhs since the petitioner tendered his resignation before the completion of three years period of service.

7. Identical issue came up for consideration before a Division Bench of this Court in W.A.No. 2736/2009 disposed on 9.12.2009. The Division Bench by following the law declared by the Apex court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, held that a condition as unconscionable and unenforceable in the eye of law. For the reasons stated in the order in W.A.No. 2736/2009 this writ petition is liable to be allowed.

8. Learned Counsel for the respondents contends that collecting the damages of Rs. 2.00 lakhs from the petitioner for breach of conditions of employment is legal and placed reliance on the following decisions:

i) Niranjan Shankar Golikari Vs. The Century Spinning and Mfg. Co. Ltd.,

ii) Superintendence Company of India (P) Ltd. Vs. Sh. Krishan Murgai,

iii) M. Sham Singh Vs. State of Mysore,

iv) Chairman and Managing Director, India Airlines Vs. Binod Kumar Sinha and Others,

v) Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and

Manufacturing Co., Ltd.,

vi) Dr. S. Gobu Vs. The State of Tamilnadu

9. The Supreme Court in AIR 1967 SC 1098 and AIR 1980 SC 1717 considered the effect of condition in the contract after the termination of contract u/s 27 of the Contract Act. The Supreme Court in M. Sham Singh Vs. State of Mysore, considered the effect of condition in the contract where a employer granted scholarship to the employee for further studies. In Chairman and Managing Director, India Airlines Vs. Binod Kumar Sinha and Others, the Supreme Court considered the condition in the contract relating to giving advance notice before tendering resignation by the employee.

Therefore, these judgments have no application to the facts on hand. In the instant case we are dealing with unconscionable condition in the contract u/s 23 of the Contract Act. Further the Supreme Court in Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd., has not considered the scope of unconscionable condition in contract of employment and the scope of Section 23 of the Contract Act was not considered and examined. Therefore, even these judgments have no application to the facts on hand.

For the reasons stated above, the following:

ORDER

i) Writ petition is hereby allowed.

ii) The condition in recruitment notification Annexure-A, order of appointment, Annexure-B and indemnity bond Annexure-H in so far as it relates to demanding and recovering a sum of Rs. 2.00 lakhs as damages is held as unconscionable, unsustainable and unenforceable in law.

iii) Respondents are hereby directed to refund the amount of Rs. 2.00 lakh's together with interest @ 9% to the petitioner.

iv) Ordered accordingly.