
(2008) 09 OHC CK 0047
In the Orissa High Court

Smt. Meenakshi Panda

APPELLANT

Vs

UCo. Bank and Others

RESPONDENT

Date of Decision : 15-09-2008

Acts Referred:

Citation : (2009) 107 CLT 138 : (2009) 120 FLR 674 : (2009) 2 LLJ 275 :
(2008) 2 OLR 934

Hon'ble Judges : R.N. Biswal, J;B.P. Das, J

Bench : Division Bench

Judgement

B.P. Das, J.—The brief facts leading to this writ application as delineated therein tends to reveal the following.

The petitioner has been working as an employee under opposite party No. 1- United Commercial Bank ("Bank" hereinafter) since 26th September, 1977, her first place of posting being in Bhubaneswar Branch of the Bank. In 2004 when she was continuing as an Officer in Scale-III in Suryanagar Branch of the Bank at Bhubaneswar, she was selected for being posted in an Overseas Center of the Bank, i.e. at Singapore on the terms and conditions enumerated in the communication dated 21.5.2004 vide Annexure-1. In terms of Annexure-1, the petitioner executed the necessary agreement with the Bank vide Annexure-2 and joined as Chief Manager (Trade Finance) at Singapore Main Branch. On September 6, 2007 due to certain personal problems she tendered her resignation from Bank's service by the letter in Annexure-3.

2. The Bank received and acknowledged the same by its letter in Annexure-4. On September 7, 2007 the petitioner wrote a letter to the General Manager Personnel, opposite party No. 2 (Annexure-5) requesting him to accept her resignation and adjust her dues to the Bank, i.e., Rs. 10 lakhs as liquidated damages as per the agreement in Annexure 2, from her provident fund contribution gratuity and by encashment of leave due to her. It is further indicated in the said letter that in case of any short fall between the amount payable and the amount receivable by her, the same could be debited from her

savings bank account at the C.R.P. Headquarters Branch, Bhubaneswar, and if there be any amount receivable after clearance of her dues, the same may be credited to her aforesaid S.B. Account. On September 24, 2007 the petitioner received a letter from the Chief Manager, Singapore vide Annexure-6 stating that the Personnel Department of the Head Office had advised the following:

We have placed the matter before the Competent Authority who has declined to accept her resignation from the services of the Bank on consideration of terms and conditions of her posting abroad.

On receipt of Annexure-6 the petitioner sent a representation-on September 26, 2007 to the Executive Director (Opposite party No. 3) indicating that the Bank's policy did not prohibit her from submission of her resignation even when she was posted abroad and the petitioner agreed to abide by all terms and conditions of her posting abroad as applicable to her resignation.

3. It was further indicated in the said letter that the petitioner agreed to pay the bond money and ready to be repatriated to India at her own cost and further undertook that she shall not take up employment with the Bank's client or associates of clients subsequent to her resignation from the Bank. She has also expressed her willingness to pay due salary in lieu of notice as applicable under the Bank's rules. The said representation dated September 26, 2007 is annexed as Annexure-7. It was forwarded to the head office. As there was no response, on October 6, 2007, the petitioner addressed a letter (Annexure-9) to the Chief Executive (Singapore Operations), indicating therein that she wished to confirm that her last date of service at the UCO Bank was 6th October, 2007 and that Annexure-9 may be treated as relinquishment of her employment from the Bank. She attached a pay order (Manager's cheque) for SGD 9372.30 with Annexure-9 being 3 months salary in lieu of notice. She also submitted the keys of her residential accommodation provided to her by the Bank.

4. The petitioner intimated the Chief Executive (Singapore Operations) U.Co. Bank vide letter dated 8th October 2007 (Annexure-10) that she departed from Singapore to India on flight and provided her mailing address of India therein. But according to her she was surprised to receive a letter dated 6th October 2007 from the Chief Manager, Personnel (Annexure-11) indicating therein that she had already been informed about the Bank's decision of not accepting her resignation and that they were neither in a position to accept her resignation nor relieve her until and unless clearance was received from the head office.

5. On 15th October, 2007 opposite party No. 5 issued a letter (Annexure-12) to the Bank indicating therein that the petitioner be repatriated to India at her own cost and that her resignation would be considered by the Personnel Department as per the guidelines in Clause VI of letter No. ID/IBD/1192/2004. It is stated that on 22nd October, 2007 the petitioner received another letter from opposite party No. 5 (Annexure-13)) on the same line of Annexure-12. On 29th October, 2007 she sent a letter to the Personnel Services Department, wherein she

indicated that she had already relinquished her service at UCO Bank since 6th October, 2007. She further intimated therein that she returned to India from Singapore on the same date at her own cost. She received a show cause notice dated 15.10.2007 (Annexure-15/1) signed by the Chief Manager, Singapore, the petitioner responded to it on 12.11.2007, the contents of which, inter alia, reads as follows:

On 6th October, 2007 you submitted a letter mentioning that 6th October, 2007 was your last day and you are relinquishing your employment with the Bank. You are not reporting for duties since 7th October, 2007. The above act on your part is unbecoming of a Bank Officer. You are hereby called upon to show cause within seven days of receipt of this letter as to why suitable disciplinary action should not be initiated against you for your above conduct. If your explanation is not received within the stipulated period, it would be presumed that you have no explanation to offer and the Bank shall act accordingly.

6. In response to the show cause, the petitioner submitted her explanation under Annexure-16. As the opposite parties are not accepting her resignation and relieving her, she has filed this application with a prayer to direct the opposite parties to accept her resignation after relieving her from service.

Counter affidavit has been filed by the opposite parties indicating therein that the petitioner had tendered her resignation with a cheque being three month's salary in lieu of notice and did not join duty which was illegal and in contravention of the agreement entered into between the parties. She could not be relieved from duty unless her resignation was accepted and clearance from the headquarters office was received in that regard.

7. As she did not report to duty from 7.10.2007, as a matter of abundant caution, the bank took up the matter with Ministry of Manpower (Work Pass Division) Government of Singapore on 17.10.2007 for cancellation of Employment Pass issued in favour of the petitioner and the Bank lodged a complaint with Singapore police authority as she abandoned the Bank service, despite bank having not accepted her resignation. It is further indicated in the counter affidavit that before resignation of the petitioner was accepted, she had joined DBS Bank for which the opposite parties took up the matter with Advocates and Solicitors seeking legal recourse against the petitioner and DBS Bank, Singapore if possible. It is further indicated in the counter affidavit that while the petitioner was working as Senior Manager Suryanagar Branch under Zonal Office, Bhubaneswar in the year 2003 she had committed various irregularities for which the Bank recommended initiation of disciplinary proceedings against her. Accordingly a departmental proceeding was initiated and a show cause notice dated 15.4.2008 was issued against her.

8. When the disciplinary proceeding is continuing against her, her resignation cannot be accepted, and as such the petitioner is not entitled to get any relief.

Learned Counsel for the petitioner heavily relied upon Clause 6 of Annexure-1

which stipulate as follows:

6. The resignation submitted abroad will not be accepted. In case you tender your resignation abroad, you will be repatriated to India at your own cost and your resignation will be dealt with as per rules/guidelines issued by the Government/Reserve Bank of India or any other provisions in Officers Service Regulations, 1979 that may be in force from time to time.

9. According to the learned Counsel for the petitioner in conformity with the said terms, the petitioner repatriated to India at her own cost and there was no allegation against her till the writ application was filed. The disciplinary proceeding was initiated deliberately by the opposite parties with a motive to harass the petitioner and not to allow her to be relieved from the Bank.

Learned Counsel for the petitioner drew our attention to Clause 6 of the Agreement, Annexure-2 which reads as follows;

In the event of breach of any of the covenants/undertakings aforesaid, the officer shall pay to the Bank a sum of Rs. 10,00,000/- (Rupees ten lakhs only) as and by way of agreed liquidated damages.

It is submitted by him that the petitioner is ready and willing to pay the liquidated damages of Rs. 10,00,000/- (Rupees ten lakhs). In fact she has already given a cheque for SGD 9372.30 in lieu of three months' salary.

10. After completion of one month from the date of tendering her resignation she left the service and returned the keys of the residential quarters provided by the Bank in a good condition. Now the opposite parties have no other option but to accept the resignation of the petitioner.

11. In the aforesaid background, the question arises whether the petitioner can leave service after depositing three month's salary in lieu of notice and whether the petitioner's resignation can be accepted during the pendency of the proceeding. In this regard our attention has been drawn to the UCO. Bank (Officers') Service Regulations, 1979. It is admitted by both sides that the petitioner's service is governed by the aforesaid Regulation, Regulation 20 of which is quoted hereunder:

20(1) Subject to Sub-regulation (3) of Regulation 16, the Bank may terminate the services of any officer by giving him three months' notice in writing or by paying three months' emoluments in lieu thereof.

(2) An Officer shall not leave or discontinue his service in the Bank without first giving a notice in writing of his intention to leave or discontinue the service or resign. The period of notice required shall be three months and shall be submitted to the Competent Authority as prescribed in these regulations.

Provided that the Competent Authority may reduce the period of three months or remit the requirement of notice.

3(a) Notwithstanding anything to the contrary contained in Sub-regulation (2) an Officer against whom disciplinary proceedings are pending shall not leave/ discontinue or resign from his service in the Bank without the prior approval in writing of the Competent Authority or any notice or resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the Competent Authority.

(b) Disciplinary proceeding shall be deemed to be pending against any employee for the purpose of this regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings should not be instituted against him or where any charge sheet has been issued against him and will be deemed to be pending until final orders are passed by the Competent Authority.

(c) An Officer under suspension on a charge of misconduct shall not be retired or permitted to retire on his reaching the date of compulsory retirement, but shall be retained in service until the enquiry into the charge is concluded and a final order is passed thereon.

12. A bare reading of the aforesaid provision of the regulation shows that there is no scope for giving three months' salary in lieu of notice. The regulation as quoted above is very clear. As it appears, show cause notice was issued to the petitioner first under Annexure-15/1 on 15.4.2008 during pendency of the writ application which is not disputed. So admittedly the petitioner's resignation having not been accepted till date this Court cannot direct the opposite parties to accept that during the pendency of the disciplinary proceedings in the teeth of aforesaid regulation. Hence the petitioner is not entitled to the relief sought for in the writ application. The legality of the disciplinary proceeding has not been challenged in the writ petition. So we have no occasion to deal with the same. While dismissing the writ applications, we direct the opposite parties to expedite the disciplinary proceeding and conclude the same as early as possible.

9. The writ application is disposed of accordingly.

R.N. Biswal, J.

I agree.