
(2007) 02 GAU CK 0017
In the Gauhati High Court

State Bank of India and Others

APPELLANT

Vs

Ashok Kr. Das

RESPONDENT

Date of Decision : 02-02-2007

Acts Referred:

Citation : (2007) 2 GLT 959

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—This second appeal has arisen out of the judgment and decree, dated 01.12.2001, passed by the learned Civil Judge (Senior Division) No. 1, Cachar, Silchar, in Title Appeal No. 39/1999, dismissing the Appeal and upholding thereby the judgment and decree, dated 28.05.99, passed, in Title Suit No. 153/92, by the learned Civil Judge (Junior Division) No. 2, Silchar, whereby the suit was decreed in favour of the plaintiff-respondent herein.

2. The plaintiff case, briefly stated, is thus: The plaintiff was an employee of the State Bank of India, the plaintiffs appointment having been made, on 14.11.83, and his service having been confirmed on 10.8.84. While the plaintiff had been working as a messenger, at the Silchar branch of the said bank, he, suddenly, suffered from mental illness, on or around 8.8.90, and remained under treatment of Dr. H.R. Goswami of the Department of Psychiatry, Silchar Medical College. After prolonged treatment, the plaintiff was certified by the doctor, on 14.11.91, to be fit for normal duty. As the plaintiff, due to his mental illness, could not attend his duties at the bank, the bank authorities, treating the absence of the plaintiff from duty as his absence without leave, passed an order, on 12.12.90, directing that the plaintiff shall stand voluntarily retired with effect from 12.12.1990. Upon his recovery from mental illness, though the plaintiff sought to join his duties, his employer did not accede to his request. The plaintiff, therefore, instituted a suit seeking, inter alia, the relief of declaration that the order, dated 12.12.90, voluntarily retiring him from service, was illegal and that

his period of absence, from 8.8.90 till 13.11.91, may be treated as a period of leave on medical ground.

3. The defendants contested the suit, their case being, in brief, thus: in terms of the conditions of service and, particularly, in terms of the settlement, which had been entered into between the State Bank of India, on the one hand, and All India State Bank Staff Federation, on the other, the service of a person, who remains absent from duty for a period of more than ninety days, shall be liable to termination. In the present case, as the plaintiff had remained absent from duty for over a period of ninety days, the defendants served a notice on the plaintiff and, on the failure of the plaintiff to rejoin his duties, he was voluntarily retired by the impugned, dated 12.12.90. In the facts and circumstances of the case, therefore, the action of the defendants was wholly within the ambit of law and may not be interfered with. The defendants accordingly sought for dismissal of the suit.

4. Following issues were framed for determination in the suit:

(1) Is the suit maintainable in law?

(2) Is there cause of action for the suit?

(3) Whether the order dated 12.12.90 of the defendants sending the plaintiff for voluntary retirement by way of termination from service etc. was illegal, void and inoperative and without authority?

(4) Whether the plaintiff is entitled to the decree as prayed for ?

(5) Cost of the suit.

Additional Issue No. 6

(6) Whether the suit is bad under the provisions of the terms and of settlement between S.B.I. and All India S.B.I. Staff Federation and bipartite settlement between Indian Bank Association and All India Workmen Unions?

Issue No. 7.

(7) Whether the Civil Court has jurisdiction to try the suit or not ?

5. Having recorded the evidence adduced by the parties, the learned trial Court decided the issues in favour of the plaintiff. The suit was accordingly decreed. As the appeal preferred by the defendants has yielded no favourable result to them, the defendants have, now, come to this Court with this second appeal.

6. I have heard Mr. B. Kalita, learned Senior counsel, appearing on behalf of the defendants-appellants, and Mr. S.S. Dey, learned Counsel for the plaintiff-respondent.

7. This second appeal has been heard on the following two substantial questions of law:

i) Whether, admittedly, the plaintiff-respondent being away from duty continuously for more than ninety days without any intimation to the authority, whether as per the relevant service Rules (Bipartite settlement), the defendants-appellants have the right and authority to terminate the service and whether the courts below have committed illegality by holding the order for voluntary retirement in question illegal?

ii) Whether the courts below having held that the issue and publication of notice before passing the impugned order for voluntary retirement was established, whether the courts below have committed illegality by holding the order for voluntary retirement illegal?

8. Referring to the agreement aforementioned, it has been submitted, on behalf of the appellants, that the agreement gave the appellants, as employer, the right to terminate, after giving a notice, the service of an employee, who remains absent from duty, without leave, for a period of ninety days. In the case at hand, submits Mr. Kalita, the appellants had duly published the notice and it was upon such publication of notice, when the plaintiff did not offer any explanation for his absence from duty, his service was terminated. In such circumstances, contends Mr. Kalita, the appellants exercised the power of termination of service of the plaintiff in accordance with law and the learned Courts below ought not to have interfered with such a legally valid termination of service. It is further submitted by Mr. Kalita, learned Senior counsel, appearing on behalf of the appellants, that when the publication of the notice was admitted, the learned Courts below could not have held that the order, directing voluntary retirement of the plaintiff from service, was illegal.

9. Controverting the submissions made on behalf of the appellants, Mr. S.S. Dey, learned Counsel for the respondent, submits that when the plaintiff has proved that he was mentally ill, the publication of notice by the defendants is of no consequence inasmuch as the plaintiff, in such circumstances, cannot be held to have notice of what the defendants had done and, without putting the plaintiff on notice and without offering him an effective opportunity of having his say in the matter, his service could not have been legally terminated.

10. Having heard the learned Counsel for the parties, and upon perusal of the materials on record, what clearly transpires is that the fact that the appellants, as employer, have the right to terminate an employee's service if the employee remains absent from duty without leave cannot be disputed. What is, however, important to note is that such termination is not possible without putting the employee concerned to notice or without giving the employee concerned an opportunity of having his say in the matter, for, the termination of service is possible only when the absence of the employee is willful and, in a given case, whether or not an employee's absence from his duty is or is not willful is really a question of fact, which can be answered only after the employee is given, at least, an opportunity to show cause against proposed termination of his service on the ground of his willful absence from duty.

11. A notice, as is ordinarily, understood, means giving intimation or putting a person to warning, either asking him to do an act, or restrain himself from doing an Act. The person, who suffers from mental illness, cannot be said to have been put to notice, for, such a person would not know as to what he was doing and/or what was being done to him. In such case, a notice may validly be served on a person, who may have been appointed as guardian of the mentally sick person. In the case at hand, the plaintiff has adduced cogent and adequate evidence to prove that the plaintiff had suffered from mental illness and remained accordingly under medical treatment from 08.08.90 to 13.11.91. In such circumstances, the very fact that he was away from duty could not have been known to the plaintiff nor could it be possible to say that he knew that his absence from duty was willful and that he had been served with a notice by his employer.

12. In the circumstances, as indicated hereinabove, the publication of notice by the defendant could not have been held, and has rightly not been held, as valid service of notice on the plaintiff. This apart, in the face of the evidence on record, the plaintiff's absence from duty could not have been held to be a consciously committed default nor could have such absence been regarded as willful absence from duty. Viewed thus, the termination of the plaintiff's service warranted interference by the Court.

13. Because of what have been discussed and pointed out above, I do not find that the learned trial Court's finding that the plaintiff was entitled to the reliefs, which have been granted, suffers from any infirmity, factual or legal. This appeal raises no question of law, far less substantial question of law. The appeal is wholly without merit and shall, therefore, stand dismissed accordingly.

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