
(2002) 08 KAR CK 0040
In the Karnataka High Court
Case No : Writ Appeal No. 3402 of 1999

State Bank of India and Others

APPELLANT

Vs

D.K. Seetharam

RESPONDENT

Date of Decision : 16-08-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 18 (1), 2 (p)
Industrial Disputes Rules, 1957 — Rule 58 (4)

Citation : (2003) 96 FLR 614 : (2002) 5 KarLJ 347 : (2002) 4 KCCR 380 SN :
(2002) 3 LLJ 1023

Hon'ble Judges : Kumar Rajaratnam, J;K. Bhakthavatsala, J

Bench : Division Bench

Advocate : K.S. Ramdas, for B.C. Seetharam Rao, for the Appellant; R. Padmanabha, for the Respondent

Final Decision : Dismissed

Judgement

Kumar Rajaratnam, J.—The State Bank of India being aggrieved by the order of the learned Single Judge in W.P. No. 15896 of 1996, dated 9-2-1999 has preferred this writ appeal.

2. The facts very briefly are.-

The respondent was working as a clerk with the appellant-Bank. He remained absent continuously from 28-3-1994. The respondent was served with a notice on 22-11-1994 giving him time of 30 days to report for duty and explain the cause for his unauthorised absence. This notice was given to the respondent under the terms of the bipartite settlement governing the service conditions of the staff. In spite of service of notice the respondent failed to report for duty within the stipulated time. He also did not submit any explanation for his unauthorised absence. Accordingly, the appellants removed him from the rolls.

3. Aggrieved by his removal from service the respondent challenged the endorsement issued to him by the Bank treating him as having abandoned the

service with the Bank in W.P. No. 15896 of 1996.

4. The learned Single Judge allowed the writ petition and directed the Bank to reinstate the respondent in service with all consequential benefits. This is how the Bank is before us.

5. The learned Single Judge placed heavy reliance on the judgment of the Supreme Court in the case of Uptron India Limited Vs. Shammi Bhan and Another, The Supreme Court while interpreting Clause 17(g) of the Certified Standing Orders of the company which gave a similar right held that where the standing orders states that the services of the employee are liable to be automatically terminated implies that there is a discretion to the management to terminate or not to terminate the services of an employee who ever stays without leave. This discretion by the management cannot be exercised or permitted to be exercised capriciously. The discretion has to be based on an objective consideration of all the circumstances and material which may be available 011 record. Ultimately, the Supreme Court in Uptron's case, supra, held as follows:--

"In view of the above, we are of the positive opinion that any clause in the certified Standing Orders providing for automatic termination of service of a permanent employee, not directly related to "Production" in a Factory or Industrial Establishment, would be bad if it does not purport to provide an opportunity of hearing to the employee whose services are treated to have come to an end automatically".

6. The question that arises for consideration in this writ appeal is whether the respondent-employee was given enough opportunity to obey the transfer orders and if enough opportunity was given to the respondent-employee whether the management would be entitled to remove the respondent from the rolls for unauthorised absence without an enquiry on the basis of the binding settlement entered into between the management and the association.

7. Before we deal with the memorandum of settlement we must be understood to state that the memorandum of settlement cannot create a situation where the employee is liable to be terminated arbitrarily and without following the principles of natural justice. Equally every act of the management will have to be seen in the context of fairness, equity and justice. However, binding a settlement may be between the management and the employee, the principles of natural justice will have to be complied with while understanding the memorandum of settlement.

8. A memorandum of settlement dated 17-9-1984 was entered into between the management of 55 A class Banks as represented by the Indian Banks" Association and their workmen as represented by All India Bank Employees Association and National Confederation of Bank Employees was arrived at under Sections 2(p) and 18(1) of the Industrial Disputes Act, 1947 read with Rule 58(4) of the Industrial Disputes (Central) Rules, 1957.

9. The relevant portion of the settlement which concerns us is Clause XVI. Clause XVI deals with the Voluntary Cessation of employment by the employees.

10. We shall extract only the relevant portion of Clause XVI which applies to the circumstances of this case. The relevant portion reads as follows.-

"In supersession of Clause 2 of the Settlement dated 8th September, 1983 the following shall apply:

Where an employee has not submitted any application for leave and absents himself from work for a period of 90 or more consecutive days without or beyond any leave to his credit or absents himself for 90 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended or where there is satisfactory evidence that he has taken up employment in India or the management is satisfied that he has no present intention of joining duties the management may at anytime thereafter give a notice to the employee's last known address calling upon the employee to report for duty within 30 days of the notice, stating inter alia, the grounds for the management 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 or unless he gives an explanation for his absence 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 permitted 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".

11. In other words where an employee has not submitted any application for leave and absence himself from work for a period of 90 days or more and where the management is satisfied that the employee has no intention of joining duties the management may anytime after 90 days give notice to the employee to report for duty within 30 days from notice. If the employee does not report for duty within 30 days and if he does not give satisfactory explanation for his absence the employee will be deemed to have voluntarily retired from the Bank services on the expiry period of the said notice. If however, the employee gives the satisfactory reply the employee may be permitted to report for duty thereafter within 30 days without prejudice to the Bank's rights to take any action under the Rules of service. A reading of the Clause XVI would indicate that even within the period of 90 days of unauthorised absence if the employee gives an explanation which is satisfactory then the employee would be permitted to report for duty within 30 days thereafter and if within 30 days of notice the employee does not send any satisfactory reply then the employee is deemed to have voluntarily retired from Bank services on the expiry of 30 days.

12. The close reading of Clause XVI would indicate that the management is at

liberty to terminate the services of an employee if he continuously absents himself for 90 days after notice without a proper explanation. This clause was not incorporated in the service regulation of the Bank. This clause is there by virtue of memorandum of settlement entered into between the management of 55 A class Banks as represented by the Indian Banks' Association and their workmen as represented by All India Bank Employees Association and National Confederation of Bank Employees. This settlement between the management and the employees of the Banks is a binding settlement entered into under Sections 2(p) and 18(1) of the Industrial Disputes Act.

13. It cannot be by any stretch of imagination be called a regulation. A settlement entered into between the management and the employees is binding equally on the employees as well as the management. In that view of the matter we hold that the settlement is on a slightly higher footing than the regulations, however with a rider that any settlement must be in conformity with the principles of natural justice.

14. If an employee is absent continuously for a period of 90 days without submitting any application for leave and it" on the expiry of 90 days, a further 30 days notice is given calling upon the employee to report for work, such condition cannot be termed as being contrary to the principles of natural justice. Within the regulation two conditions will have to be satisfied before a person can be removed from the rolls without an enquiry, which are as follows:

(1) He should have continuously absented himself for work for 90 days without lawful cause.

(2) In spite of 30 days notice he has failed to report for duty or fails to give a satisfactory explanation.

15. This built-in safeguards cannot be termed as arbitrary or contrary to the principles of natural justice.

16. No person can with impunity stay away from work continuously for 120 days unlawfully without adverse consequences. Utter defiance of discipline will be at the peril of the employee.

17. It is in this background we shall deal with the facts of the case. The first communication addressed to the respondent-employee is dated 12-8-1994 which reads as follows.-

"Annexure-F Sri D.K. Seetharama, Clerk/Typist/Cashier, State Bank of India, Bhatkal

State Bank of India, Bhatkal. 12-8-1994 No. AGM/1/12

Dear Sir/Madam,

Staff: Award,

Sri D.K. Seetharam - Transfer to our N.P.C.C., Kaiga Branch.

I have to advise that I have been instructed by the Zonal Office, Hubli that pending initiation of disciplinary proceedings against you for certain act of gross misconduct alleged to have been committed by you at the Branch. You have been transferred to our N.P.C.C., Kaiga Branch.

2. You will be relieved as at the close of business on 13th August, 1994 and report to our N.P.C.C., Kaiga Branch on 23-8-1994 after availing the intervening period as joining time-cum-journey period.

Yours faithfully, Sd/- Branch Manager, Code No. 5392, CPC".

18. No doubt the communication at Annexure-F, dated 12-8-1994 speaks about certain disciplinary proceedings against the respondent. It also speaks about the respondent being transferred from Bhatkal Branch to N.P.C.C., Kaiga Branch. He was given time till 23-8-1994 to report for duty at Kaiga Branch. On 13-8-1994 the respondent sent his reply stating that he has certain personal family problems and requested the management to retain him at Bhatkal Branch. Another communication was sent by the Bank stating that the respondent was absenting himself for duty from 23-8-1994 and he was asked to report for duty within 3 days of the communication. On 22-11-1994 a notice as per Annexure-J was served on the respondent by the Bank Manager which reads as follows:

"Registered A.D. Post 1. Sri D.K. Seetharam, S/o. K. Venkataram Devadiga, West Block Road, Kundapur (Dakshina Kannada) 576 201. 2. Sri D.K. Seetharam, C/o. State Bank of India, Bhatkal Branch, Bhatkal.

State Bank of India N.P.C.C., Kaiga 22-11-1994. Memo No. 2 UNAUTHORISED ABSENCE FROM DUTY

Please refer to the Memo No. Nil, dated 5-9-1994 calling upon you to report for duty. It is observed that you are continuing to be absent from duty since 23-8-1994. The above position is highly irregular and in contravention of the rules governing your service in the Bank. You are therefore hereby advised to report for duty " within 30 days of the date of this notice. If you fail to do so, you will be deemed to have voluntarily abandoned service on the expiry of this notice, in which case you would also be liable to pay to the Bank one month's pay and allowance in lieu of the notice.

Sd/- Branch Manager".

19. This notice clearly indicates that 90 days period has expired and that the employee was given 30 days more to report for duty. The respondent challenged the communication dated 12-8-1994 at Annexure-F and the notice dated 22-11-1994 at Annexure-J in W.P. No. 873 of 1995 in an earlier writ petition.

20. The learned Single Judge there (in earlier writ petition) held that there was absolutely no ground made out to challenge the transfer order. The learned Single Judge also held that the respondent gave a representation stating that his transfer order may be cancelled. The learned Single Judge (in the earlier writ

petition) further held that merely giving a representation is no ground for not reporting for duty at the transferred place and also that it is not a ground to absent himself from duty. Aggrieved by the order of the learned Single Judge in W.P. No. 873 of 1995 the respondent preferred the W.A. No. 3282 of 1995. The Division Bench of this Court dismissed the writ appeal by an order dated 1-9-1995.

21. A perusal of the order of the learned Single Judge in W.P. No. 873 of 1995 and the Division Bench's judgment in W.A. No. 3282 of 1995 show that although the respondent had lost in both the Courts he did not ask the Court time for reporting for duty. On the contrary there was total defiance of the transfer order made by the management and the respondent continuously remained absent without a lawful cause. Even after the memo dated 22-11-1994 another communication was sent by the Bank requesting the respondent-employee to report for duty failing which it will be construed that the respondent has voluntarily abandoned his service in the Bank.

22. Ultimately, an order was passed on 6-4-1995 as per Annexure-P stating that the respondent was unauthorisedly absent for duty from 23-8-1994 and failed to report for duty by 25-12-1994. In these circumstances it was deemed that the respondent had voluntarily abandoned his service on 25-12-1994.

23. In spite of number of opportunities being given to the respondent to report for duty, the respondent did not bother to report for duty and the Bank had no alternative except to rely on the terms of the settlement without recourse to an enquiry.

24. It is not known how the principles of natural justice has been violated. The order directing the respondent to report for duty at Annexure-J, dated 22-11-1994 was challenged by the respondent in the earlier writ petition unsuccessfully. The appeal preferred by the respondent was also dismissed by the Division Bench of this Court. This Court in earlier writ petition had put the respondent on notice that he should report for duty.

25. When the learned Single Judge dismissed the writ petition on 12-1-1995 the impugned order removing the respondent from the rolls of the Bank was yet to be issued. The impugned order was issued only on 6-4-1995. It would have been perfectly possible for the respondent to have reported for duty after the writ petition was dismissed, but he did not do so.

26. The binding nature of settlement entered into by the Union and the management gives the management right to delete the name of the employee from the rolls of the Bank under certain conditions for unauthorised absence. The conditions are fair and just. The condition is that he should be absent continuously for 90 days without lawful cause and the employee should be given 30 days time for reporting for duty after the expiry of 90 days and if ultimately within the period of 30 days the respondent does not report for duty then the management is at liberty to remove the employee from service. Checks and

balances have been provided for the safety of a permanent employee. Even during the period of 90 days of absence or subsequently within 30 days of notice if the employee had a satisfactory explanation for his absence then the management is bound to consider the case of the employee sympathetically.

27. In this case there has been a total defiance and no explanation whatsoever was forthcoming from the employee for his unauthorised absence.

28. Indeed a clear warning was available to the employee when his writ petition was dismissed by the learned Single Judge in W.P. No. 873 of 1995. The learned Single Judge in W.P. No. 873 of 1995 has held as follows:

"There are absolutely no grounds made out to challenge the transfer order. Immediately after the transfer order, he made a representation Annexure-G stating that his transfer order, may be cancelled. That by itself is not a ground for not reporting to duty to the transferred place. That is also not a ground for the petitioner to absent himself from duty".

(emphasis supplied)

29. The words of the learned Single Judge that there was no justification for the respondent to absent himself from duty clearly indicates that the respondent was absenting himself unauthorisedly at his peril. It is only after that the impugned order was passed at Annexure-P, dated 6-4-1995.

30. The learned Single Judge in W.P. No. 15896 of 1996 which is before us under appeal held that the settlement dated 17-9-1994 has been arrived at by the vast majority of workmen and they have been accepted in totality. Having said that the learned Single Judge held erroneously that the termination was contrary to the principles of natural justice.

31. As can be seen from the facts stated above there was no automatic termination by any stretch of imagination. Enough opportunity was given to the respondent to report for duty and in total defiance and in violation of settlement the respondent continues to be absent unauthorisedly without even a semblance of an explanation.

32. Discipline is paramount to any society and defiance of authority without justifiable cause can lead to chaos in industrial relations between the management and the employees.

33. We have examined this case carefully both from the point of view of the binding principles of natural justice and also with reference to the terms of the settlement. It is not necessary to debate this matter any further. From the records it is clear that ample opportunity has been given to the respondent which the respondent did not take advantage of. In spite of clear warning being given in the earlier writ petition the respondent did not heed the advice of this Court directing the respondent to report for duty.

34. The Supreme Court in the case of State Bank of Patiala and others Vs. S.K.

Sharma, pronounced that every person must have a reasonable and adequate opportunity to defend himself and ultimately the test should be whether there was any prejudice caused to the employee. If the procedure is fair and reasonable the Court should be slow to interfere with the orders passed by the management.

35. In this case we have no hesitation in coming to the conclusion that apart from the binding nature of the settlement the respondent has been given every opportunity to explain his alleged unauthorised absence. No explanation was forthcoming except to plead for hardship and such an explanation is no explanation at all in the eye of law, since transfer is an incidence of service.

36. We accordingly set aside the order of the learned Single Judge and dismiss the writ petition. No order as to costs.