
(2014) 08 AHC CK 0009
In the Allahabad High Court
Case No : C.M.W.P. No. 1571 (S/S) of 2011

Syed Mohd. Khalid

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Citation : (2015) 1 AWC 436

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Judgement

B. Amit Sthalekar, J.—The petitioner in this writ petition is seeking quashing of the orders dated 15.6.2010, 22.9.2010 and 1.6.2010 arising out of departmental proceedings held against him. Briefly stated the facts of the case are that the petitioner was appointed as a Clerk in the Bank of India, Aishbagh Branch, Lucknow in the year 1975. On 17.11.1982, he received a Telegram (Annexure-1 to the writ petition) from his brother-in-law who was then residing in Muscat (Oman) that the petitioner's sister was seriously ill and he was asked to reach Muscat alongwith his mother. On 19.11.1982, the petitioner is stated to have submitted an application to one Shri A.K. Rastogi, the then Manager of the Aishbagh Branch of the Bank of India at Lucknow praying for 60 days leave without pay w.e.f. 19.11.1982 in order to enable him to proceed to Muscat. It is stated that while in Muscat the petitioner himself fell ill with Enteric Fever and on 15.1.1983 he was advised complete rest for three weeks by the doctor. On 16.1.1983 the petitioner applied for extension of his leave by 18 days. He also sent the medical certificate alongwith the application. However, he could not recover from the Enteric Fever and was again advised for two weeks further rest by the doctor therefore, he sent another leave extension application on 4.2.1983 alongwith the medical certificate. It is further stated by the petitioner that even while he was still ill he fell from the stairs at his sister's residence at Muscat on 10.2.1983 and became unconscious for many years and thereafter he remained in semi conscious condition and also suffered from mental aberration resulting in mental black out due to head injury. He had been diagnosed as suffering from

"Manic Depressive Psychosis Bypolar". He had to be hospitalized on 10.2.1983 till 30.8.1983. Then from 15.1.1984 to 30.3.1984 and again from 23.4.1985 to 13.7.1985. The case of the petitioner also is that when he was in Hospital his sister received a letter dated 12.4.1983 from the Manager of the Aishbagh Branch of the Bank, Lucknow in which the receipt of petitioner's application dated 4.2.1983 was acknowledged alongwith medical certificate but it was stated that since there was no communication from the petitioner after 19.2.1983 the petitioner should report immediately for duty otherwise action would be taken against him for unauthorized absence from duty. Another letter of the same content was sent on 17.5.1983 by the Manager of the Aishbagh Branch and it was also stated that if the petitioner does not report immediately for duty it will be presumed that he had abandoned his duty and his name would be struck of from the Bank's record. It is however admitted by the petitioner that the letter was received by his sister but not shown to him because of his acute mental condition at that time.

2. The case of the petitioner further is that on 1.7.1983, a notice was published in the Pioneer English News Paper stating that the petitioner was absenting himself from duty since 19.2.1983 without submitting any application for unauthorized absence from duty and that he was being given a final opportunity to report for duty within 15 days otherwise it would be accepted that the petitioner had voluntarily abandoned his job w.e.f. 16.7.1983. On 4.8.1983, the petitioner's sister wrote to the Manager of the Bank informing him about the incident and accident suffered by the petitioner and, his hospitalization and that he was not in a position to read or write or to understand what was written and the doctor on duty had also advised not to disturb the petitioner. On 18.7.1983, the Manager of the Bank at Lucknow passed an order that the petitioner had not reported for duty within the specified period and, therefore, a presumption was drawn that the petitioner was not interested in continuing his service with the Bank and his name has been struck of from the Bank's employment register. In July, 1985 the doctor attending on the petitioner in Muscat declared him medically fit to travel to India. The petitioner upon reaching Lucknow on 30.7.1985 was put under the treatment of one Dr. Narrottam Lal, Reader in the Department of Psychiatry, King George Medical College, Lucknow. He remained under treatment till 31.10.1985 when he was declared medically fit.

3. Immediately upon being declared medically fit the petitioner reported for duty before the Manager of the Bank on 31.10.1985 but the Manager did not allow him to join the duty and informed him that his name had been struck of from the register of the employees of the Bank. The petitioner preferred a representation before the Chairman and Managing Director of the Bank but by letter dated 30.4.1986 the Manager of the Bank informed him that his representation had been rejected by the Chairman and Managing Director of the Bank on 22.5.1986. The petitioner preferred an appeal. As the petitioner's appeal against the order dated 30.4.1986 had not been decided, the petitioner filed Writ Petition (S/S) No. 12870 of 1990 which was disposed of with a direction to the respondents to

dispose of the appeal of the petitioner. In pursuance of the order of the court dated 12.12.1990 the Zonal Manager, Bank of India, Lucknow by his letter dated 6.3.1991 communicated to the petitioner that his representation was considered by the General Manager and he was treated to have voluntarily retired from the Bank's service.

4. Aggrieved by the order dated 30.4.1986 and 6.3.1991 the petitioner filed Writ Petition No. 2824 (S/S) of 1991 which was allowed by the court by order dated 12.6.2009 and the order dated 6.3.1991 and the notice dated 18.7.1983 and letter dated 19.7.1975 were quashed. A direction was issued to the respondents forthwith to reinstate the petitioner. It was, however, left open to the respondents to pass a fresh order regarding payment of backwages after hearing the petitioner. Liberty was also granted to the respondents to initiate disciplinary proceedings against the petitioner.

5. After the judgment dated 12.6.2009 the petitioner reported for duty on 17.6.2009 on the same day he was served with a letter of the General Manager of Aishbagh Branch of the Bank asking him to furnish the details mentioned in the letter. The petitioner by letter dated 19.6.2009 furnished the information desired by the General Manager of the Bank on 24.6.2009 and thereafter an order was passed by the Zonal Manager reinstating the petitioner in service w.e.f. 17.6.2009 and he was asked to report to the Zonal Office. The petitioner reported at the Lucknow Zonal Office on 25.6.2009 and on 26.9.2009, he was served with a charge-sheet in which the only charge against him was that he had remained unauthorizedly absent from duty continuously for more than 30 days without intimation and the act constituted gross misconduct within the meaning of para 5 (P) of the Bipartite Settlement dated 10.4.2002. The petitioner on 19.8.2009 represented to the enquiry officer that the misconduct was of the year 1982 and as such he could not be charged for violation of paragraph 5 (P) of the Bipartite Settlement dated 10.4.2002 and no enquiry should be held against him. He also submitted a list of documents to enable him to defend himself in the enquiry. He also filed Writ Petition No. 4513 (S/S) dated 2009 challenging the charge-sheet dated 26.6.2009. On 1.9.2009, he was served with a copy of the enquiry report requiring him to submit his explanation in respect of the findings recorded by the enquiry officer. The petitioner submitted his reply on 1.9.2009 and on 6.11.2009, a show cause notice was issued to him as to why the punishment of compulsory retirement from service be not imposed upon him. The petitioner submitted his reply to the show cause notice denying the charges levelled against him reiterating that the Bipartite Settlement dated 10.4.2002 was not applicable in his case. In the meantime the Writ Petition No. 4513 (S/S) of 2009 was disposed of by the court with the observation that due to prolonged litigation considerable time has lapsed but that does not mean that the Bipartite Settlement dated 10.4.2002 can be applied retrospectively and a direction was issued to the respondents to correct the charge-sheet and proceed in accordance with law thereafter.

6. It is stated by the petitioner that instead of correcting the charge-sheet he was served with another charge-sheet dated 3.3.2010 and it was mentioned that the act of the petitioner amounted to gross misconduct if proved, within the meaning of paras 19.5(e) and 19.5(j) of the Bipartite Settlement 1966. On 12.3.2010, the petitioner submitted a representation before the Enquiry Officer which was rejected by the disciplinary authority by order dated 13.3.2010 and on 26.3.2010 the petitioner submitted his statement of defence. The petitioner also filed Writ Petition No. 2249 (S/S) of 2010 seeking quashing of the charge-sheet dated 3.3.2010. This writ petition was dismissed by the court by order dated 27.4.2010. The petitioner preferred a Special Appeal No. 404 of 2010 which was also dismissed on 8.5.2010 with the observation that the petitioner may challenge the final order raising all the pleas.

7. In the meantime the petitioner submitted an application before the Enquiry Officer on 15.4.2010 complaining of severe pain in the neck and his inability to submit his brief. The request for time was rejected by the Enquiry Officer. On 18.4.2010 the petitioner is stated to have been hospitalized and remained admitted in hospital till 24.4.2010. While he was still in hospital he was served with an order dated 19.4.2010 requiring him to submit his explanation to the findings recorded by the Enquiry Officer within four days. On 26.5.2010, he was served a show cause notice as to why he may not be discharged from service. He was also served with another show cause notice by the Zonal Manager also dated 26.5.2010 to appear before him to enable him to take a decision with respect to payment of backwages. The petitioner submitted his reply to the show cause notice denying the charges. He also appeared before the disciplinary authority in respect of his claim for arrears of salary. However, on 15.6.2010 the impugned order was passed imposing the penalty of discharge from service with superannuation benefits. Aggrieved the petitioner preferred a departmental appeal before the Zonal Manager on 26.7.2010. On 22.9.2010, his departmental appeal was also dismissed. The other order impugned in the present writ petition is also dated 15.6.2010 wrongly mentioned as 1.6.2010 by which the petitioner's claim for backwages for the period he remained unauthorizedly absent from duty has been rejected on the principle of no work no pay".

8. I have heard Sri Anurag Srivastava, learned counsel for the petitioner and Sri Lalit Shukla, learned counsel for the respondents and perused the documents on record as well as the original records submitted before the court by Sri Lalit Shukla.

9. The contention of the learned counsel for the petitioner is that since the incident refers to the year 1982, therefore, it is the Bipartite Settlement dated 19.10.1966 which will be applicable in the case of the petitioner and not the Bipartite Settlement dated 10.4.2002. The Bipartite Settlement dated 19.10.1966 has been referred to in paragraph 55 of the writ petition which reads as follows:

"Bipartite Settlement dated 19.10.1966

CHAPTER XIX

DISCIPLINARY ACTION AND

PROCEDURE THEREFORE

19.5. By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of the employee.

(a).....

(e) wilful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;

.....

(f) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;

19.6. An employee found guilty of gross misconduct may:

(a) be dismissed without notice; or

(b) be warned or censured, or have an adverse remark entered against him; or

(c) be fined; or

(d) have his increment stopped; or

(e) have his misconduct condoned and be merely discharged.

19.7. By the expression "minor misconduct" shall be meant any of the following acts and omissions on the part of an employee:

(a) absence without leave or overstaying sanctioned leave without sufficient grounds;

19.8. An employee found guilty of minor misconduct may:

(a) be warned or censured; or

(b) have an adverse remark entered against him;

or

(c) have his increment stopped for a period not longer than six months.

19.9. A workman found guilty of misconduct, whether gross or minor, shall not be given more than one punishment in respect of any one charge."

The Bipartite Settlement dated 10.4.2002 reads as follows:

"Bipartite Settlement dated 10.4.02

5. By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee:

(a).....

.....

(e) wilful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;

.....

(j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss.

.....

(p) remaining unauthorizedly absent without intimation continuously for a period exceeding 30 days.

6. An employees found guilty of gross misconduct may:

(a) be dismissed without notice; or

(b) be removed from service with superannuation benefits, i.e., Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or

(c) be compulsorily retired with superannuation benefits, i.e., Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or

(d) be discharged from service with superannuation benefits, i.e., Pension end/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or

(e) be brought down to lower stage in the scale of pay up to a maximum of two stages; or

(f) have his increment/s stopped with or without cumulative effect; or

(g) have his special pay withdrawn; or

(h) be warned or censured, or have an adverse remark entered against him; or

(i) be fined.

7. By the expression "minor misconduct" shall be meant any of the following acts and omissions on the part of an employee:

(a) absence without leave or overstaying sanctioned leave without sufficient grounds;

.....

8. An employee found guilty of minor misconduct may:

- (a) be warned or censured; or
- (b) have an adverse remark entered against him; or
- (c) have his increment stopped for a period not longer than six months.

9. A workman found guilty of misconduct, whether gross or minor, shall not be given more than one punishment in respect of any one charge."

10. It is submitted by the learned counsel for the petitioner that under the Bipartite Settlement dated 19.10.1966 absence without leave or over staying sanctioned leave without sufficient ground did not fall within the expression "gross misconduct".

11. On the contrary in terms of para 19.7(a) the expression "minor misconduct has been defined to mean absence without leave or over staying sanctioned leave without sufficient ground.

12. The submission therefore, is that even if it is assumed that the petitioner had absented himself without leave or over stayed the sanctioned leave without sufficient grounds he could not have been discharged from service. The second submission of the learned counsel for the petitioner is that the High Court while deciding the petitioner's Writ Petition No. 4513 (S/S) of 2009 has observed that the petitioner has to be proceeded in accordance with the Rules prevailing at the time when the misconduct was committed, may be that due to prolonged litigation considerable time has lapsed, but that does not mean that the Bipartite Settlement dated 10.4.2002 can be applied retrospectively. It is only after this observation that the High Court had directed the respondents to correct their charge-sheet and proceed accordingly. In the alternative, the learned counsel for the petitioner submitted that even though under the Bipartite Settlement dated 10.4.2002 para 5 (P) the expression gross misconduct includes remaining unauthorizedly absent without intimation continuously for a period existing 30 days but under para 7(a) thereof the expression minor misconduct has been defined to mean absent without leave or overstaying sanctioned leave without sufficient grounds and, therefore, in any case the only penalty which could have been given to the petitioner, if at all was the penalty prescribed for minor misconduct in para 19.8 of the Bipartite Settlement dated 19.10.1966 and those prescribed in para 8 of the Bipartite Settlement dated 10.4.2006 and in any case the order of discharge could not have been passed.

13. Learned counsel for the petitioner next submitted that from a perusal of the charge-sheet dated 26.6.2009 and the amended charge-sheet dated 3.3.2010 it will be seen that both state that the petitioner had requested the Bank for granting 60 days leave w.e.f. 19.11.1982 itself but before obtaining confirmation as to whether the leave had been sanctioned or not he remained absent from duty unauthorizedly and left India without the Bank's permission. Subsequently he submitted the leave application dated 16.1.1983 from Muscat requesting for

grant of sick leave for 18 days w.e.f. 18.1.1983 enclosing a medical certificate of one Dr. M. Ali Ibrahim of Oman Clinic. It is also mentioned in the charge-sheet that he submitted another leave application dated 4.2.1983 desiring sanction of leave for further two weeks w.e.f. 5.2.1983. The Manager Aishbagh Branch by his letter dated 12.4.1983 and 7.5.1983 advised him to report for duty immediately. These letters were sent by registered post and were also published in the English and Hindi Newspapers on 1.7.1983. The letters were sent on the address given by the petitioner at Muscat and were received by his brother-in-law and yet the petitioner failed to report for duty. The petitioner's leave application dated 19.11.1982, 16.1.1982 and 4.2.1983 alongwith the bank's letter dated 12.4.1983 were listed has relied upon documents in the charge-sheet.

14. Receipt of the Bank's letter is not disputed by the petitioner. Rather it is admitted in para 13 of the writ petition that these letters were received by his sister but not shown to him as he was stated to be not in a fit mental condition to read or understand the same.

15. A perusal of the original records, which was summoned by this Court by order dated 2.8.2013 shows that in his application dated 19.11.1982 seeking applying for 60 days of leave the petitioner had requested that he may be granted leave without pay for 60 days effective from 19.11.1982. None of the documents on record to show that the leave applications of the petitioner were ever sanctioned.

16. In this view of the matter merely because the petitioner had submitted leave applications it would not lead to an inference that such leave was automatically and necessarily granted. The copies of the leave applications have been filed by the petitioner himself as Annexure-30 collectively to the writ petition.

17. Thus, from the documents on record, the factum of unauthorized absence from duty of the petitioner is clearly established.

18. The Supreme Court in the case of State of Punjab Vs. Dr. P.L. Singla, has held as under:

"11. Unauthorized absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first is to condone the unauthorized absence by accepting the explanation and sanctioning leave for the period of the unauthorized absence in which event the misconduct stood condoned. The second is to treat the unauthorized absence as a misconduct, hold an enquiry and impose a punishment for the misconduct.

12. An employee who remains unauthorisedly absent for some period (or who overstays the period of leave), on reporting back to duty, may apply for condonation of the absence by offering an explanation for such unauthorized absence and seek grant of leave for that period. If the employer is satisfied that there was sufficient cause or justification for the unauthorized absence (or the

overstay after expiry of leave), the employer may condone the act of indiscipline and sanction leave post facto. If leave is so sanctioned and the unauthorized absence is condoned, it will not be open to the employer to thereafter initiate disciplinary proceedings in regard to the said misconduct unless it had, while sanctioning leave, reserved the right to take disciplinary action in regard to the act of indiscipline.

13. We may note here that a request for condoning the absence may be favourably considered where the unauthorized absence is of a few days or a few months and the reason for absence is stated to be the sudden, serious illness or unexpected bereavement in the family. But long unauthorized absences are not usually condoned. In fact in Security services where discipline is of utmost importance, even a few of days overstay is viewed very seriously. Be that as it may.

14. Where the employee who is unauthorizedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorized absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence. Where the punishment is either dismissal or removal, it may not be necessary to pass any consequential orders relating to the period of unauthorized absence (unless the rules require otherwise). Where the punishment awarded for the unauthorized absence, does not result in severance of employment and the employee continues in service, it will be necessary to pass some consequential order as to how the period of absence should be accounted for and dealt with in the service record. If the unauthorized absence remains unaccounted, it will result in break in service, thereby affecting the seniority, pension, pay etc.. of the employee. Any consequential order directing how the period of absence should be accounted, is an accounting and administrative procedure, which does not affect or supersede the order imposing punishment."

19. The question however, is as to whether the penalty is to be imposed against the petitioner under the Bipartite Settlement dated 19.10.1966 or the Bipartite Settlement dated 10.4.2002 and whether the penalty during the absence without leave or overstaying sanctioned leave would fall under the expression gross misconduct or minor misconduct.

20. It is not in dispute that the incident relates to the year 1982 (19.11.1982) when the petitioner was alleged to have proceeded on leave for 60 days to Muscat before obtaining confirmation of leave. Therefore, it is the Bipartite Settlement on 19.10.1966, which will be applicable in his case and not the Bipartite Settlement on 10.4.2002. It will be the date of the misconduct which

will determine the applicability of Rules, in this case the Bipartite Settlement and in the facts of the case it is the Bipartite Settlement on 19.10.1966 which will be applicable.

21. This was also the view taken by the learned single Judge and the directions given in the petitioner's earlier Writ Petition No. 4513 (S/S) of 2009 and the court had held that the Bipartite Settlement dated 10.4.2002 cannot be applied retrospectively. The respondents were, therefore, directed to correct their charge-sheet and the proceedings and thereafter proceeded in accordance with law after hearing the petitioner.

22. However, in the second charge-sheet, which was issued on 3.3.2010 after the judgment of the court in Writ Petition No. 4513 (SS) of 2009 the petitioner was charged with acts of gross misconduct within the meaning of paragraph 19.5(e) and paragraph 19.5(j) of the Bipartite Settlement dated 19.10.1966. Paragraph 19.5(e) defines gross misconduct to mean wilful insubordination or disobedience of any lawful and reasonable order of the management or of a superior. Paragraph 19.5(j) also defines the expression gross misconduct as doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss.

23. As already noted above the petitioner had left the Bank by submitting an application applying for 60 days leave and proceeded to Muscat. This leave had never been sanctioned to the petitioner and even in the original records which have been produced by the respondent-Bank there is not a shred of document to show that any such leave had ever been sanctioned to the petitioner. The petitioner proceeded Muscat by submitting the leave application under a misconceived impression and misconception that his leave would be sanctioned but that was not to happen. Even after going to Muscat, he kept sending leave applications and none of the leave applications, were sanctioned by the respondent-Bank. It is also the admitted case of the petitioner that the registered letter sent by the Bank at the Muscat address had been received by his sister but the same had never been given to him on the ground that he had suffered a head injury and was not in a position to read or understand what was written. It is to be noted that the petitioner has filed certain copies of leave applications written in his own handwriting as Annexures-5 and 6 to the writ petition which documents are also to be found in the original records and which demolish the case of the petitioner that he was not in a position to read or understand what is written as stated by him in paragraphs 9, 10 and 13 of the writ petition. Thus, from 19.11.1982 till about July, 1985, i.e., for almost two and half years the petitioner remained absent from duty on one pretext or other taking one ground of illness or another. The medical report submitted by Dr. M. Ali Ibrahim also mentions that the petitioner suffered 5 episodes of depression and 3 episodes of Hypermania and was under treatment for the following periods:

"(i) 10.2.1983 to 30.8.1983

(ii 15.1.1984 to 30.4.1984

(iii) 23.4.1985 to 13.7.1985."

24. This shows that between the period from 30.8.1983 to 15.1.1984 for almost four and half months the petitioner was quite fit. Again from 30.4.1984 to 23.4.1985, a period of almost one year the petitioner was quite fit and there is absolutely no reason as to why he could not come back to India and report from duty.

25. The petitioner in support of his case has relied upon the decision of the Supreme Court in *The Commissioner, Karnataka Housing Board Vs. C. Muddaiah*, , particularly paragraphs 33 and 34. Paragraphs 34 and 35 reads as follows:

"34. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where *ex facie* injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a Court of Law. The court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The court, in the circumstances, directs the Authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the Authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged.

35. We are conscious and mindful that even in absence of statutory provision, normal rule is "no work no pay". In appropriate cases, however, a Court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the Authority to grant him all benefits considering "as if he had worked". It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected."

26. Learned counsel has also referred to another judgment of the Supreme Court in *Krushnakant B. Parmar Vs. Union of India (UOI) and Another*, of the said judgment read as follows:

"16. in the case of appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion of duty and his behaviour was unbecoming of a Government servant. The question whether "unauthorised absence from duty" amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful.

18. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

19. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct."

27. I have gone through the judgments particularly the paragraphs referred to above and in my opinion neither of the judgments has any application to the facts of the present case.

28. On the other hand on behalf of the respondents reliance has been placed upon the following decisions:

"(i) *State of U.P. and Others Vs. Raj Kishore Yadav and Another*, ;

(ii) *Bank of India and Others Vs. T. Jogram*, ;

(iii) *State Bank of India Vs. Ram Lal Bhaskar and Another*, ;

(iv) *Union of India (UOI) and Others Vs. Alok Kumar*, ;

(v) *Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu*, ;

(vi) *Uma Kant Mishra Vs. Chairman U.P. State Bridge Corp. Ltd.*, ; and

(vii) *S.M. Khalid Vs. Bank of India and Others*, ."

29. Thus, the entire story set up by the petitioner that he was so debilitated by his ailment that he was incapable of reporting for duty does not lend credence to the case and has to be rejected on the facts of the case.

30. Even the averment in paragraph 13 of the writ petition that the petitioner's

sister wrote to the Manager, Aishbagh Branch of the Bank on 4.8.1983 that the petitioner had suffered a fall and had to be hospitalized and was not in a position to think, read or write does not inspire confidence because as noted above after 30.8.1983 till 15.1.1984 as per the doctor's certificate there was nothing wrong with the petitioner he could have reported for duty.

31. In this view of the matter, I am of the firm view that the petitioner is guilty of gross misconduct as defined in paragraph 19.5(e), (j) of the Bipartite Settlement dated 19.10.1966 and therefore, the penalty imposed is perfectly justified in the facts and circumstances of the present case and I do not find any illegality or infirmity in the orders impugned in the writ petition. The writ petition lacks merit and is accordingly dismissed.