
(2013) 09 DEL CK 0107

In the Delhi High Court

Case No : Writ Petition (C) No. 4886 of 1994

Tilak Raj Mullick

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 23-09-2013

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2013) 09 DEL CK 0107

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : M. Dutta, for the Appellant; Rajiv Kapur and Ms. Vatsala Rai, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this writ petition the petitioner-Sh. Tilak Raj Mullick seeks the relief that the respondent no. 1/State Bank of India should take him back in service without any break in service and with consequential entitlement to pensionary benefits. Petitioner has also prayed for quashing of the actions of the respondent-bank in treating the petitioner as having vacated the job voluntarily and which is so stated by the respondent-bank in its letter dated 19.4.1985. Petitioner during the hearing has confined the relief claimed to the grant of pensionary benefits inasmuch as the petitioner has crossed the age of superannuation and thus cannot get reinstatement. The case as set up in the writ petition is that petitioner had taken leave to visit his ailing mother in New York where he met with an accident and consequently petitioner applied for extension of leave by his application dated 21.1.1985. The respondent no. 1-bank allowed permissible leave but since the petitioner did not thereafter re-join, the bank wrote a letter dated 19.4.1985 to the petitioner that since all leaves of the petitioner were exhausted the petitioner should therefore report for duty within 7 days from the date of receipt of the letter otherwise it shall be presumed that petitioner had vacated the job voluntarily. On receiving this letter, petitioner by

his letter dated 29.6.1985 sought voluntary retirement from the bank. Petitioner claimed medical grounds for seeking voluntary retirement. Respondent no. 1-bank by its letter dated 6.3.1986 informed the petitioner for arranging of medical check-up as per his request seeking voluntary retirement on medical grounds, and to which petitioner responded to by his letter dated 18.3.1986 suggesting the dates in April, 1986 as being available for the medical check up. Petitioner pleads that in spite of agreeing for medical examination, respondent no. 1-bank however did not undertake the medical examination of the petitioner. Petitioner then after about 4 1/2 years wrote to the respondent no. 1-bank on 15.7.1990 that he had recovered from his illness and therefore he wanted to re-join his service with the bank. On this request being made by the petitioner, the respondent no. 1-bank informed him that he is deemed to have vacated the job voluntarily on 19.4.1985. Subsequent correspondence was thereafter entered into, however, the crux of the matter which has resulted is the issue between the parties as argued before me that whether petitioner is deemed to have voluntarily vacated his job w.e.f. 19.4.1985 as contended by the respondent no. 1-bank.

2. On behalf of the petitioner reliance is placed upon the Constitution Bench judgment of the Supreme Court in the case of Jai Shanker Vs. State of Rajasthan, to argue the proposition that even if a person overstays his leave there is no automatic termination of services and such termination from services without following the principles of natural justice is illegal. Paras 4 to 7 of this judgment are relied upon and they read as under:-

4. The short question in this appeal is whether Jai Shanker was entitled to an opportunity to show cause against the proposed punishment as required by Clause (2) of Art, 311. It is admitted that no charge was framed against him. Nor was he given any opportunity of showing cause. The case for the State Government is that Government did not terminate Jai Shanker's service, and that it was Jai Shanker who gave up the employment by remaining absent. It is submitted that such a case is not covered by Art. 311. In support of this contention certain Regulations of the Jodhpur Service Regulations are relied upon and we shall now refer to them. Regulation 7 lays down that leave cannot be claimed as a right and that Government has discretion to refuse or revoke leave of any description. Regulation 11 lays down that an individual who has been granted leave on medical grounds for a period of one month or more may not return to duty without producing a certificate of fitness signed by an officer authorised by a general or special order to grant such certificate. Regulation 12 lays down that an individual who absents himself without permission or remains absent at the end of his leave is entitled to no salary for the period of such absence and that period will be debited against his leave account unless the leave is sanctioned or extended under the ordinary rules by competent authority. Regulation 13 is important because it forms the basis of the contention that Art. 311 does not apply to this case. That Regulation may be reproduced here:

13. An individual who absents himself without permission or who remains absent without permission for one month or longer after the end of his leave should be considered to have sacrificed his appointment and may only be reinstated with the sanction of the competent authority.

Note:- The submission of an application for extension of leave already granted does not entitle an individual to absent himself without permission.

5. It is contended that this regulation operated automatically and no question of removal from service could arise, because Jai Shankar must be considered to have sacrificed his appointment. Under the regulation he could only be reinstated with the sanction of the competent authority. We have therefore, to determine whether this regulation is sufficient to enable the Govt. to remove a person from service without giving him an opportunity of showing cause against that punishment, if any.

6. It is admitted on behalf of the State Government that discharge from service of an incumbent by way of punishment amounts to removal from service. It is, however, contended that under the Regulation all that Government does, is not to allow the person to be reinstated. Government does not order his removal because the incumbent himself gives up the employment. We do not think that the constitutional protection can be taken away in this manner by a side wind. While, on the one hand, there is no compulsion on the part of the Government to retain a person in service if he is unfit and deserves dismissal or removal, on the other, a person is entitled to continue in service if he wants until his service is terminated in accordance with law. One circumstance deserving removal may be over-staying one's leave. This is a fault which may entitle Government in a suitable case to consider a man as unfit to continue in service. But even if a regulation is made, it is necessary that Government should give the person an opportunity of showing cause why he should not be removed. During the hearing of this case we questioned the Advocate General what would happen if a person owing to reasons wholly beyond his control or for which he was in no way responsible or blameable, was unable to return to duty for over a month, and if later on he wished to join as soon as the said reasons disappeared? Would in such a case Government remove him without any hearing, relying on the regulation? The learned Advocate General said that the question would not be one of removal but of reinstatement and Government might reinstate him. We cannot accept this as a sufficient answer. The Regulation, no doubt, speaks of reinstatement but it really comes to this that a person would not be reinstated if he is ordered to be discharged or removed from service. The question of reinstatement can only be considered if it is first considered whether the person should be removed or discharged from service. Whichever way one looks at the matter, the order of the Government involves a termination of the service when the incumbent is willing to serve. The Regulation involves a punishment for overstaying one's leave and the burden is thrown on the incumbent to secure reinstatement by showing cause. It is true that the Government may visit the

punishment of discharge or removal from service on a person who has absented himself by over-staying his leave, but we do not think that Government can order a person to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of showing cause why he should not be removed. If this is done the incumbent will be entitled to move against the punishment for, if his plea succeeds, he will not be removed and no question of reinstatement will arise. It may be convenient to describe him as seeking reinstatement but this is not tantamount to saying that because the person will only be reinstated by an appropriate authority, that the removal is automatic and outside the protection of Art. 311. A removal is removal and if it is punishment for over-staying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it. To give no opportunity is to go against Art. 311 and this is what has happened here.

7. In our judgment, Jai Shankar was entitled to an opportunity to show cause against the proposed his leave and as no such opportunity was given to him removal from service was illegal. He is entitled to this declaration. The order of the High Court must therefore, be sent aside and that of the District Judge, Jodhpur restored. The question of what back salary is due to Jai Shankar must now be determined by the trial Judge in accordance with the rules applicable, for which purpose there shall be a remit of this case to the Civil Judge, Jodhpur.

(underlined portions stressed by petitioner)

3. It is contended on behalf of the petitioner that in the case of Jai Shanker (supra) the rule in question was similar to the Rule 92 which is relied upon by the respondent no. 1-bank in the present case. It is argued that the Constitution Bench in the case of Jai Shanker (supra) has clearly held that the constitutional protection against removal from service without following the principles of natural justice cannot be taken away. It is also argued that in para 6 the Supreme Court has said that even if there is a rule to remove an employee without following the principles of natural justice yet such employee should not be removed without following the principles of natural justice.

4. Reliance on behalf of the petitioner is also placed upon the judgment of the Supreme Court in the case of Uptron India Limited Vs. Shammi Bhan and Another, that even if there are standing orders of a company for automatic termination of services, such an order is void and unconstitutional and service of a worker under the Industrial Disputes Act cannot be terminated without following the principles of natural justice. Similar observations of the Supreme Court in the case of D.K. Yadav Vs. J.M.A. Industries Ltd., are also relied upon.

5. On behalf of respondent no. 1-bank it is argued that as per Rule 20 of the State Bank of India (Supervising Staff) Service Rules, before an employee such as the petitioner could claim voluntary retirement on medical grounds he should have completed 25 years of service with the bank and which 25 years of service

the petitioner had not completed because the petitioner's application was dated 29.6.1985 and the 25 years period had not been completed by then as petitioner had joined the bank on 9.2.1961 and the 25 years period would be complete only as on 8.2.1986. It is also argued that in terms of Rule 92 there is forfeiture of appointment when a person remains absent without leave and which took place on the respondent-bank giving the notice dated 19.4.1985 to the petitioner. Rule 20 with its second and third provisos and Rule 92 are reproduced hereunder:-

Rule 20. An employee shall retire from the service of the Bank on attaining the age of fifty-eight years or upon the completion of thirty years" pensionable service whichever occurs first.

Xxxx xxxx xxxx xxxx

Provided further that an employee may, at the discretion of the Executive Committee, be retired from Bank's service after he has attained 50 years of age or has completed 25 years" pensionable service by giving him three months" notice in writing or pay in lieu thereof.

Provided further that an employee who has completed 25 years pensionable service maybe permitted by the Executive Committee to retire from the Bank's service, subject to his giving three months" notice in writing or pay in lieu thereof unless this requirement is wholly or partly waived.

Rule 92. An employee who overstays his leave, except in circumstances beyond his control, shall not be entitled to any salary or allowance fro the period of his absence without leave and shall also be liable to forfeiture of his appointment or to any of the penalties specified in rule 49.

6. The aforesaid Rule 92 is sought to be buttressed by referring to the judgment of the Supreme Court in the case of Syndicate Bank Vs. The General Secretary, Syndicate Bank Stff Association and Another, which holds that once an employee is asked to join back his services and he does not do so, then thereafter, there is deemed abandonment of his services and no further requirement exists for following the principles of natural justice of conducting a detailed enquiry. Paras 17 and 18 of the judgment which are relied upon on behalf of respondent no. 1 read as under:-

17. It is no point laying stress on the principles of natural justice without understanding their scope or real meaning. There are two essential elements of natural justice which are: (a) no man shall be judge in his own cause; and (b) no man shall be condemned, either civilly or criminally, without being afforded an opportunity of being heard in answer to the charge made against him. In course of time by various judicial pronouncements these two principles of natural justice have been expanded, e.g., a party must have due notice when the Tribunal will proceed; Tribunal should not act on irrelevant evidence or shut out relevant evidence; if the Tribunal consists of several members they all must sit together at all times; Tribunal should act independently and should not be biased against

any party; its action should be based on good faith and order and should act in just, fair and reasonable manner. These in fact are the extensions or refinements of the main principles of natural justice stated above.

18. The Bank has followed the requirements of Clause 16 of the Bipartite Settlement, it rightly held that Dayananda has voluntarily retired from the service of the Bank. Under these circumstances it was not necessary for the Bank to hold any inquiry before passing the order. An inquiry would have been necessary if Dayananda had submitted his explanation which was not acceptable to the Bank or contended that he did report for duty but was not allowed to join by the Bank. Nothing of the like has happened here. Assuming for a moment that inquiry was necessitated, evidence led before the Tribunal clearly showed that notice Avas given to Dayananda and it is he who defaulted and offered no explanation of his absence from duty and did not report for duty within 30 days of the notice as required in Clause 16 of the Bipartite Settlement.

(underlining added)

7. On behalf of respondent no. 1, reliance is also placed upon the judgment of the Supreme Court Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others, to contend that merely by regularly sending applications for leave on medical grounds, the same will not entitle a person to claim that he has valid ground to stay away from duty and that in such a case a bank is fully entitled to take a decision that the employee had abandoned his services and in such a case there is no further requirement of conducting the detailed enquiry and giving of a notice to join is sufficient compliance of the principles of natural justice when the employee fails to rejoin and does not have/give valid justification for the entire period of absence from duty. The observations in this judgment are relied upon which show that as per the Bipartite Settlement entered into between the management of 58 banks with their workmen, there can be a voluntary cessation of employment of an employee i.e. of deemed abandonment of service by an employee. It is argued on the basis of the observations of the Supreme Court in this judgment that application of principles of natural justice is case specific and the principle is no unruly horse. It is also argued the long period of absence of the petitioner of about 4 1/2 years without valid reasons including of not furnishing any medical certificate after April, 1986 till he sought to claim entitlement to re-join in July, 1990 is enough for the respondent no. 1-bank to arrive at a decision that there was no valid justification for the petitioner not to join pursuant to the notice dated 19.4.1985. Paras 15, 18, 22, 23, 24, and 25 of the said judgment are relied upon and the same read as under:-

15. The bipartite settlement is clear and unambiguous. It should be given a literal meaning. A bare perusal of the said settlement would show that on receipt of a notice contemplated thereunder, the workman must either: (1) report for duties within thirty days; (2) give his explanation for his absence satisfying the management that he has not taken any employment or avocation; and (3) show that he has no intention of not joining the duties. It is, thus, only when the

workman concerned does not join his duties within thirty days or fails to file a satisfactory explanation, as referred to hereinbefore, the legal fiction shall come into force. In the instant case except for asking for grant of medical leave, he did not submit any explanation for his absence satisfying the management that he has not taken up any other employment or avocation and that he has no intention of not joining his duties.

18. Mere sending of an application for grant of leave much after the period of leave was over as also the date of resuming duties cannot be said to be a bona fide act on the part of the workman. The Bank, as noticed hereinbefore, in response to the lawyer's notice categorically stated that the workman had been carrying on some business elsewhere.

22. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. [See Dr. (Mrs.) Gurjeewan Garewal Vs. Dr. (Mrs.) Sumitra Dash and Others, The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. (See State of Punjab Vs. Jagir Singh, and Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Another,

23. The contention raised at the Bar appears to be squarely covered by two decisions of this Court relied upon by Mr. Alex. In Syndicate Bank (supra) Wadhwa, J. speaking for the Division Bench observed:

14. Two principles emerge from the decisions: (1) principles of natural justice and duty to act in a just, fair and reasonable manner have to be read in the Certified Standing Orders which have statutory force. These can be applied by the Labour Court and the Industrial Tribunal even to relations between the management and workman though based on contractual obligations; and (2) where domestic inquiry was not held or it was vitiated for some reason the Tribunal or Court adjudicating an industrial dispute can itself go into the question raised before it on the basis of the evidence and other material on record.

15. In the present case action was taken by the Bank under clause 16 of the Bipartite Settlement. It is not disputed that Dayananda absented himself from work for a period of 90 or more consecutive days. It was thereafter that the Bank served a notice on him calling upon him to report for duty within 30 days of the notice stating therein the grounds for the Bank to come to the conclusion that Dayananda had no intention of joining duties. Dayananda did not respond to the notice at all. On the expiry of the notice period the Bank passed orders that Dayananda had voluntarily retired from the service of the Bank.

It was further held:

18. The Bank has followed the requirements of clause 16 of the Bipartite

Settlement. It rightly held that Dayananda has voluntarily retired from the service of the Bank. Under these circumstances it was not necessary for the Bank to hold any inquiry before passing the order. An inquiry would have been necessary if Dayananda had submitted his explanation which was not acceptable to the Bank or contended that he did report for duty but was not allowed to join by the Bank. Nothing of the like has happened here. Assuming for a moment that inquiry was necessitated, evidence led before the Tribunal clearly showed that notice was given to Dayananda and it is he who defaulted and offered no explanation of his absence from duty and did not report for duty within 30 days of the notice as required in clause 16 of the Bipartite Settlement.

24. The aforementioned legal position was reaffirmed by a decision of three-Judge Bench in Punjab & Sind Bank(supra), wherein it has been held:

Under this rule the employee is given an opportunity to rejoin duty within a stipulated time or explain his position to the satisfaction of the management that he has no intention of not joining duty, and a presumption will be drawn that the employee does not require the job anymore and will stand retired from service. Thus, there is no punishment for misconduct but only to notice the realities of the situation resulting from long absence of an employee from work with no satisfactory explanation thereto...

In the fact situation obtaining therein it was held that there had been sufficient compliance for principle of natural justice.

25. In Syndicate Bank (supra), this Court noticed the decision of three-Judge Bench of this Court in D.K. Yadav Vs. J.M.A. Industries Ltd., whereupon the Industrial Tribunal had placed strong reliance. In D.K. Yadav (supra) admittedly no opportunity was given to the workman and no inquiry was held. In that situation, it was observed:

8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

(underlining added)

8. Reliance is then placed upon by the respondent no. 1-bank on the judgment of the Supreme Court in the case of Punjab and Sind Bank and Others Vs. Sakattar Singh, to argue that there is no punishment of removal when a bank forfeits the services of an employee remaining absent from duty, and it is enough for compliance of the principles of natural justice that the employee is issued a notice to join services and which was done in this case by the notice of the

respondent no. 1 dated 19.4.1985. Para 4 of the said judgment is relied upon and the same reads as under:-

4. A reading of clause XVI of IV Bipartite Settlement will make it clear that in the event an employee absents himself from duty for 90 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended the Management may, at any time thereafter, give a notice to the employee at the last known address calling upon him to report for duty within 30 days of notice stating, inter alia, the grounds for the Management coming to the conclusion that the employee has no intention of joining duty and furnishing necessary evidence wherever relevant and unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence satisfying the Management that he has not taken up another employment or avocation and he has no intention of not joining the duty, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the time fixed in the said notice in the event of the employee giving a satisfactory reply, he will be permitted to report for duty thereafter within 30 days from the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service. Under this Rule the employee is given an opportunity to rejoin duty within a stipulated time or explain his position to the satisfaction of the Management that he has no intention of not joining duty, and a presumption will be drawn that the employee does not require the job any more and will stand retired from service. Thus, there is no punishment for mis-conduct but only to notice the realities of the situation resulting from long absence of an employee from work with no satisfactory explanation thereto. The principles of natural justice cannot be examined in vacuum without reference to the fact-situation arising in the case. This Rule has been incorporated in an agreement where representatives of employees' unions were party. They also realised the futility of continuing a situation when an employee without appropriate intimation to the management is playing truant.

(underlining added)

9. I may note that the Supreme Court in the judgments in the cases of Viveka Nand Sethi (supra) and Punjab & Sind Bank (supra) has relied upon the earlier judgment in the case of Syndicate Bank (supra) and has further expounded the ratio of Syndicate Bank (supra) by holding that principles of natural justice cannot be examined in vacuum without reference to the fact/situation arising of each case and that there is no need of holding enquiry once admitted fact appears on record that the employee failed to join the services of the bank without valid reasons. I also note that in the judgments of the Supreme Court relied upon by the respondent no. 1-bank the cases of Uptron India Limited (supra) and D.K. Yadav (supra) relied upon by the petitioner are quoted and distinguished.

10. To the aspect that an employee of an instrumentality of State cannot be removed from services without following the principles of natural justice there

cannot be any dispute, however, the Supreme Court has repeatedly held that principles of natural justice are not inflexible hidebound rules. Supreme Court has repeatedly clarified that application of principles of natural justice are case and facts specific. There can be no quarrel to the proposition of law laid down by the Supreme Court in the case of Jai Shanker (supra) relied upon by the petitioner, however we have to see whether in the facts of the present case what should be the principles of natural justice which have to be followed and whether they have been followed. It bears reiteration that Supreme Court in the judgments relied upon by the respondent no. 1 has held that once admitted facts emerge which show that there was no basis for the employee to not join the services of the bank, no purpose is served by conducting a detailed enquiry because facts are more or less admitted.

11(i). Let us now see the admitted facts in the present case. The admitted facts are that leave only till 18.4.1985 was authorized. Respondent no. 1-bank itself in the letter dated 19.4.1985 stated so and asked the petitioner to report within 7 days failing which it would be presumed that petitioner has vacated the job voluntarily. No doubt, petitioner responded to this letter of the respondent no. 1-bank dated 19.4.1985 by his letter dated 29.6.1985, however, this letter dated 29.6.1985 did not justify his medical condition by claiming extension of leave on medical grounds but by the same the petitioner asked for voluntary retirement on medical grounds. There thus admittedly did not exist any claim for any further medical leave and the issue was converted by the petitioner to grant of voluntary retirement. There is no law that an employee can absent himself from duty simply because he has sought voluntary retirement on medical grounds. Also, the period of 4 1/2 years after April, 1986 is totally an unexplained and unjustified period of absence from duty as the same is not backed by any letters of the petitioner justifying his absence on medical grounds by attaching therewith specifically detailed medical certificates. Surely a period of 4 1/2 years is a very long period of unauthorized absence. The petitioner would have known that his application for voluntary retirement was unsustainable because he had not completed 25 years of service for being eligible to file an application for voluntary retirement and he cannot rest content simply because he had argued for getting himself medically examined by his letter dated 18.3.1986.

(ii) The only provision by which petitioner could have been granted voluntary retirement on medical grounds was in terms of the second and third proviso to Rule 20 quoted above, and which could not be done because 25 years of service which is required to be completed to grant voluntary retirement was as regards the petitioner to be completed on 8.2.1986 and was not completed on 29.6.1985 when the petitioner requested for voluntary retirement on medical grounds. There is no other provision for an employee to seek voluntary retirement in the rules of the respondent no. 1-bank except as per the second and third proviso to Rule 20 quoted above which permits voluntary retirement including on medical grounds. Therefore, since 25 years were not completed, refusal of the bank to grant voluntary retirement on medical grounds as asked for by the petitioner in

his letter dated 29.6.1985 was justified. Of course, respondent no. 1-bank by its letter dated 6.3.1986 did put the petitioner under a wrong impression that petitioner can be considered for retirement on medical grounds and he should give his availability for medically examining him and to which the petitioner responded vide his letter dated 18.3.1986 however in my opinion, nothing turns on this aspect inasmuch as, if the petitioner bonafidely believed that he can be retired on medical grounds then he would not have remained silent for over a long period from 18.3.1986 to 15.7.1990. The petitioner remained silent for this long period of about 1500 days no less because he knew he could not seek voluntary retirement as he had not completed 25 years of service to invoke the provisos to Rule 20. As already stated the first correspondence by the petitioner after his letter dated 18.3.1986 is only much later in terms of the petitioner's letter dated 15.7.1990 whereby the petitioner claimed that he had become fit and therefore he wanted to rejoin the bank. The respondent no. 1-bank was asked by the petitioner by his letter dated 15.7.1990 to inform the "conditions" in which the petitioner can join the bank. At the cost of repetition this huge gap of 4 years and 3 months in my opinion is very relevant because petitioner would have known that petitioner cannot get retirement on medical grounds in terms of second and third provisos to Rule 20, and therefore, petitioner did not at all follow up his letter dated 18.3.1986 by further corresponding with respondent no. 1-bank by again asking the respondent no. 1 to fix fresh dates for medical examination of the petitioner. Therefore, in my opinion, silence of the petitioner from 18.3.1986 to 15.7.1990 speaks volumes and which is clear as stated above from the fact that in the letter dated 15.7.1990, the petitioner did not claim retirement on medical grounds but suddenly by miraculously becoming fit wanted to rejoin the bank and he asked for "conditions" for rejoining the services of the bank. Therefore, I do not find any illegality in the action of the respondent no. 1-bank informing the petitioner by its letters dated 17.1.1991 and 16.2.1991 that petitioner had vacated his job voluntarily.

12 (i) The conclusion thus arrived at from the aforesaid facts is that petitioner had not completed 25 years of service as on 29.6.1985 when he asked for retirement on medical grounds from the bank and was thus not entitled to get voluntary retirement on medical grounds as on 29.6.1985.

(ii) Petitioner had no sanctioned leave after 19.4.1985 and therefore petitioner has to be treated as illegally absent from duty from 19.4.1985. The period after 19.4.1985 thus also cannot be counted for calculating any portion of the period of 25 years for grant of voluntary retirement in terms of the second and third provisos to Rule 20 of the Bank because there has to be valid service of 25 years and which period cannot include the period of unauthorized leaves. Thus the petitioner also cannot be said to have validly applied for voluntary retirement on valid grounds in terms of his subsequent letter dated 1.3.1991, because although the formal period of 25 years had expired as on 8.2.1986 however as stated above, the petitioner had not completed 25 years of actual valid service with the respondent no. 1-bank inasmuch as, no valid service was performed by the

petitioner with the respondent no. 1 after 19.4.1985 because there was no valid sanctioned leave whereby the petitioner need not have joined the respondent no. 1-bank after 19.4.1985. Petitioner also therefore cannot claim entitlement for voluntary retirement on medical grounds in terms of his letter dated 1.3.1991.

13(i) In my opinion, the judgments which are relied upon by the respondent no. 1-bank squarely apply in the facts of the present case because the Supreme Court in the judgments relied upon by the respondent no. 1-bank was dealing with facts/situations which are more or less similar to the facts of the present case. Supreme Court in the judgments which have been relied upon by the respondent no. 1-bank has held that merely sending of applications on medical grounds is not enough for automatic entitlement of leave and it is for the employer to be satisfied that there exists valid justification for absence from duties. In accordance with the judgments of Supreme Court relied upon by the respondent no. 1, in my opinion, there was no need of the respondent no. 1-bank to follow up its letter dated 19.4.1985 with a further specific show-cause notice to join the services of the bank and the letter dated 19.4.1985 itself was the requisite show cause notice and petitioner has failed to give valid justification for not joining from April, 1985 i.e. 19.4.1985 and in any case after April, 1986. I have already above adverted to the aspect that silence of the petitioner from 18.3.1986 to 15.7.1990 being a telling aspect showing the understanding of the petitioner that he knew he was not entitled to voluntary retirement on medical grounds and thus petitioner had no valid reason not to report back for rendering his services with the respondent no. 1-bank. It may also be noted that there is no certificate filed by the petitioner after 29.6.1985 of his medical condition. Even the certificate dated 29.6.1985 in my opinion does not in any manner state that petitioner is confined to bed rest automatically for an indeterminable future period. This delightfully vague medical certificate dated 29.6.1985 states that petitioner has symptoms of back-ache and that petitioner should have bed rest with analgesics and avoid bending without at all specifying the period for which medical leave would be entitled to the petitioner. In any case, after 29.6.1985, petitioner submitted no medical certificate to justify his absence right till 15.7.1990 when in fact petitioner claimed to have been cured and wanted to join the services of the respondent no. 1-bank.

(ii) I am unable to agree that petitioner's services have been terminated without following the principles of natural justice. Principles of natural justice in the facts and circumstances of the present case stand complied with by the petitioner's failing to join the services of the bank as asked for in the letter or show cause notice dated 19.4.1985 and the petitioner's actions of not pursuing his case for voluntary retirement on medical grounds from March, 1986 to July, 1990. The ratio of the judgments in the cases of *Syndicate Bank (supra)*, *Punjab & Sind Bank (supra)* and *Viveka Nand Sethi (supra)* relied upon by the respondent no. 1 squarely apply that petitioner should be held to have voluntarily abandoned his services with the respondent no. 1 and therefore respondent no. 1 is justified in acting in terms of Rule 92 that petitioner had vacated his job voluntarily.

In view of the above, I do not find any merit in the writ petition and the same is therefore dismissed, leaving the parties to bear their own costs.