(2009) 12 DEL CK 0386

In the Delhi High Court

Case No : Writ Petition (C) No. 17193 of 2006

Umesh Kaushik APPELLANT

Vs

Indian Bank and Others RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:

Bank (Officers) Service Regulations, 1979 — Regulation 20(2), 20(3)

Citation : (2010) 166 DLT 397 : (2010) 2 ILR Delhi 337 : (2010) 3 LLJ 672

Hon'ble Judges : Rekha Sharma, J

Bench : Single Bench

Advocate : G.D. Gupta and S.K. Sinha, for the Appellant; V.K. Rao and Ayushya Kumar, for the Respondent

Final Decision : Allowed

Judgement

Rekha Sharma, J.—The petitioner was working as a Senior Manager in Hauz Khas branch of the Indian Bank when he felt he had had enough of it thus calling it a day. Citing personal reasons, he gave three months. notice of his intention to resign with effect from the date of the letter which was dated June 01, 2005. It was addressed to the Chairman & Managing Director of the Bank at Chennai and was in terms of Regulation 20(2) of the Indian Bank (Officers.) Service Regulations, 1979. Simultaneously, he also sent a letter addressed to the Trustees, Indian Bank Employees. Provident Fund, irrevocably authorizing them to adjust all his liabilities to the Bank from his terminal benefits. On the same day the Assistant Manager of Hauz Khas branch forwarded his letter to the General Manager, Circle Office, New Delhi, for favourable consideration. Two days thereafter, i.e., on June 03, 2005, the General Manager, Circle Office forwarded it to the Head Office at Chennai, recommending its acceptance. Soon thereafter, the petitioner seems to have become a little more impatient. In his resolve to bring the matter to an end at the earliest, on June 29, 2005 he sent another communication to the Chairman & Managing Director of the Bank showing his inability to complete the three months. notice period as required under

Regulation 20(2) of the Indian Bank (Officers) Service Regulations, 1979. He said, he was prepared to remit the salary of the balance period of notice not served by him and that consequently, his resignation dated June 01, 2005 be accepted with immediate effect. However, it turned down to be a case of his proposing and the Bank disposing.

2. On August 01, 2005 the General Manager, Circle Office wrote to the General Manager, Head Office that, "on perusal of the inspection report and the replies submitted by the branch, we observe that there is no major irregularity pending. We, therefore, recommend that the resignation submitted may be accepted as per rules." Thereafter, on August 06, 2005, he also informed the Chief Vigilance Officer at Chennai that no departmental proceeding was pending or contemplated against the petitioner and again recommended that the resignation be accepted as per the Rules. Despite the promptness shown by the Assistant Manager, Hauz Khas branch and the General Manager, Circle Office in forwarding the resignation of the petitioner to the Head Office and despite also the General Manager having conveyed to the Chief Vigilance Officer at Chennai that neither any departmental case was pending or contemplated, nor any major irregularity was pending against him, the Head Office sat over the letter of resignation. While the petitioner was waiting for a response and hoping it to be favourable, the Bank seemed to be in no hurry. Ultimately, it did respond. This was on August 31, 2005. The petitioner was informed that his request dated June 01, 2005 had been declined by the competent authority. The letter was bereft of any reason. On the very next day of receiving the said communication, the petitioner wrote back to the Chairman & Managing Director, requesting him to reconsider the matter, followed by another letter dated September 06, 2005, informing him that he was relinquishing office with effect from the date of the letter and also complaining to him that the decision of the Bank declining to accept his resignation without any reason was in contravention of the Service Regulations governing him. In the same communication, he also made a request to settle his dues including encashment of unavailed privilege leave and to credit the same to his Saving Account No. 408303774 with the Indian Bank, Hauz Khas Branch after deduction of dues found payable by him to the Bank. The letter elicited no response. Hence, he sent a reminder dated January 21, 2006. It too met with silence which was broken only through letter dated August 07, 2006. It was from one Shri X Joseph Anthuvan, informing him that he had been appointed as an Inquiry Officer to conduct an inquiry against him and calling upon him to appear before him on August 24, 2006 at 10.30 a.m. at the premises of Indian Bank, Circle Office, New Delhi. On receipt of the said communication, the petitioner sent a registered letter to the Inquiry Officer dated August 18, 2006 bringing to his notice that he had already resigned from the Bank vide his letter dated June 01, 2005 and in view thereof, internal disciplinary proceedings proposed to be conducted against him were illegal and not binding upon him. He, thus, called upon the Inquiry Officer to desist from the so-called disciplinary proceedings. However, without prejudice to his said stand, he also complained that the charge-

sheet had been framed against him without any preliminary inquiry and in any case, no charge-sheet had been made available to him. The next communication that the petitioner received from the Inquiry Officer was of September 22, 2006, in which he firstly made a mention of the failure on the part of the petitioner in appearing before him on August 24, 2006 and then went on to inform him that the next sitting was scheduled for October 09, 2006. He also enclosed a copy of the charge-sheet and a copy of the proceedings held on August 24, 2006. As per the copy of the charge-sheet, the Articles of charge framed against the petitioner were as under:

1) You have been absenting yourself unauthorizedly from duty from 06.09.2005 till date without obtaining prior sanction from the competent authority.

2) You have failed to obey the instructions of higher authorities, in that you had failed to rejoin duty, stating that you are relinquishing office, inspite of instructions to rejoin duty, thus disobeying the lawful orders of superiors.

3. Feeling aggrieved by the action of the Bank in initiating disciplinary proceedings against him despite his having tendered his resignation and in not paying him his terminal benefits, the petitioner moved this Court by way of the present writ-petition, praying for the following reliefs:

(i) allow the instant writ-petition and declare that the disciplinary proceedings initiated vide impugned charge-sheet dated 12.04.2006 is illegal, without competence, arbitrary and void ab-initio;

(ii) declare that the resignation of the petitioner dated 01.06.2005 came into effect on expiry of the period of notice, i.e. three months from 01.06.2005;

(iii) direct the respondents to release all terminal dues to the petitioner;

(iv) award penal interest at the rate of 24% per annum on the amount withheld by the respondents on account of gratuity and other terminal benefits from the date it became due to be paid till it is finally paid;

(v) award cost of this litigation calculated as Rs. 55,000/-.

4. For what has been noticed above, the following questions arise for consideration and they are: Was the Bank justified, in declining to accept the resignation of the petitioner and secondly, in proceeding to hold an inquiry against him on the Articles of charge as noticed above and, in not paying him his terminal benefits?

5. Before I proceed to deal with the aforesaid questions, let me notice what the Bank has to say.

6. It is not disputed by the Bank in its counter-affidavit to the writ-petition filed on March 09, 2007 and in the additional affidavit filed on January 28, 2008 that as on June 01, 2005 when the petitioner had submitted his resignation and even till the expiry of three months. notice period, no disciplinary proceeding was

either pending or contemplated against him. The only reason in not accepting the resignation of the petitioner that emerges from the affidavits, is that certain irregularities were, allegedly, committed during his tenure as Branch Manager in Hauz Khas Branch, regarding which some vigilance inspection was going on and for that reason, he was not given vigilance clearance. As regards the letter of the General Manager dated August 06, 2005 stating that no departmental proceeding was pending or contemplated against him and consequently recommending acceptance of the resignation, it is stated that it was only an intra-departmental correspondence and in any case, subsequently the vigilance department at the Head Office in an internal correspondence dated August 29, 2005 addressed to HRM department had observed several serious irregularities/deficiencies in house-keeping, following system, procedures, advances, documentations etc. It is also stated that based on this letter, the competent authority rightly rejected the resignation of the petitioner. The Bank has also made reference to a letter dated September 14, 2005 which it claims, it had sent to the petitioner and thereby had informed him that consequent upon his request to resign, the competent authority had sought vigilance clearance which was declined and consequently, his request to resign was also declined. Hence, by the same letter, he was advised to report for duty immediately with a warning that on his failure to do so, his absence from duty was to be treated unauthorized warranting disciplinary action. The Bank has also placed reliance upon Annexure-R/B to the additional affidavit dated January 28, 2008 which contains the details of the alleged irregularities detected during the vigilance inspection.

7. The petitioner has denied having received either the letter dated September 14, 2005 or Annexure-R/B to the additional affidavit. On the other hand, the learned Counsel for the respondent basing himself on the said irregularities had contended that it was not owing to personal reasons but in order to pre-empt disciplinary action against him that the petitioner decided to resign.

8. Let me at this stage refer to the Regulation which governs the termination and resignation of an Officer. It is Regulation 20(2) & (3)(i) of the Indian Bank (Officers.) Service Regulations, 1979. It runs as under:

20. Termination of Service -

x x x x x x

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

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

(3)(i) An officer against whom Disciplinary proceedings are pending shall not leave/discontinue or resign from his service in the bank without the prior approval in writing of the Competent Authority and any notice of resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the Competent Authority.

9. What does Regulation 20(3)(i) say? It says without any ambiguity that it would apply only to an Officer against whom disciplinary proceedings "are pending". What do these words "are pending" imply? The answer one finds in Regulation 20(3)(ii) which runs as under:

20(3)(ii) Disciplinary proceedings shall be deemed to be pending against any employee for the purpose of this regulation if he has been placed under suspension or any notice has been issued to him to show cause, why disciplinary proceedings shall not be instituted against him or where any charge-sheet has been issued against him and will be deemed to be pending until final orders are passed by the Competent Authority.

10. Reading together of the above said two Regulations, one is left with no manner of doubt that at the time the petitioner sent his notice of resignation following it with another letter of June 29, 2005, he was well beyond the pale and reach of Regulation 20(3)(i) read with Regulation 20(3)(ii). And, I say so because at that time, admittedly, no disciplinary proceeding was in contemplation against the petitioner, what to talk of such proceedings being pending against him. He had not been placed under suspension, even the notice of show-cause which is spoken of in Regulation 20(3)(ii) had not been issued. There was no charge-sheet. True, he had given a three months. notice. Even if for arguments. sake that period is also included and taken note of, that period expired on September 01, 2005. Even during that period, no disciplinary action was initiated against him. It is for these reasons that I observed earlier that the case falls beyond the reach and pale of Regulation 20(3)(i) read with Regulation 20(3)(ii). This being the position, what transpired much after the expiry of three months. notice period, makes no dent. An inquiry initiated in August, 2006 would not frustrate what had already fructified. It could not, and to my mind, did not take away the right which had already accrued to the petitioner. The inquiry initiated against him was an exercise in futility. The only condition which the petitioner was required to fulfill was the one contemplated by the Regulation 20(2) which mandates giving of three months. notice. It is nobody''s case that this condition was not satisfied. The Bank which has made so much ado about certain irregularities allegedly committed by the petitioner while he was posted as Branch Manager in Hauz Khas Branch never cared to confront him with the same during the currency of the notice period. And what is of significance is that even when the Inquiry Officer was appointed to hold an inquiry against him, it did not relate to any of the alleged irregularities but only with regard to his absence from duty after the notice period had come to an end. What does it go to show? It shows that the so-called irregularities were only a subterfuge to reject the resignation letter of the petitioner. In any case, as noticed above, since no disciplinary action in terms of Regulation 20(3)(i) & (ii) was taken against the

petitioner before or during the currency of notice period, the resignation letter dated June 01, 2005 came into effect on the expiry of the period of notice. Therefore, no disciplinary proceedings could be initiated against him vide charge-sheet dated April 12, 2006.

11. For the fore-going reasons, it is held that the resignation of the petitioner came into effect on the expiry of the notice period. It is further held that the disciplinary action initiated against him vide charge-sheet dated April 12, 2006 was illegal and is, therefore, void ab-initio. The respondents are directed to release the terminal benefits of the petitioner forthwith along with interest thereon @ 9% per annum from the date they became due and payable.

12. The writ-petition stands allowed.

