

(2014) 02 DEL CK 0235
In the Delhi High Court
Case No : Writ Petition (C) 5875 of 1998

Vinod Kumar Taneja

APPELLANT

Vs

M/s. Indian Overseas Bank and Another

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Contract Act, 1872 — Section 23

Citation : (2014) 2 LLN 427 : (2014) LLR 352

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Harvinder Singh and Ms. Megha Gaur, for the Appellant; Kunal Tandon, Ms. Nidhi Jain and Mr. Shashank Shekhar, for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The present petition has been filed by the petitioner challenging the award passed by the Central Government Industrial Tribunal ("Tribunal" in short) dated May 20, 1998 in I.D. No. 88/91, whereby the Tribunal rejected the claim filed by the petitioner against the action of the respondent terminating his services. It was the case of the petitioner that he joined the respondent No. 1 bank on November 29, 1979 at Chandigarh, wherefrom he was transferred to Rajinder Nagar Branch, New Delhi in November, 1980. He submitted a leave application dated April 07, 1982 seeking leave for one month for the period between April 12, 1982 to May 11, 1982 on the ground that he has to render assistance to his cousin sister who was in a family way in USA. The petitioner gave the local address as well as the foreign address for making future communication. He left for USA on April 09, 1982. On the expiry of the leave period, he could not return to India. It was his case that he suffered from a severe attack of "Ameobic Collitis" while in USA, as a result of which he could not return to India. Necessary medical certificate as proof of sickness was sent to the respondent No. 1 bank along with application for extension of leave.

2. According to the petitioner, he further met with an accident on March 25, 1983

and was under the professional care of John B. Theobalds, M.D. 3436, 16th Street, N.W. Washington D.C. 2(X)10, who had given a certificate in that regard to Air India enabling the petitioner to seek the validity of the ticket booked by him for coming back to India.

3. It was the case of the petitioner that he had sent the medical certificate about his involvement in the accident and requested for extension of leave. According to him, he returned back to India in January, 1984 and immediately thereafter he reported to the bank when he was shocked to learn that bank had illegally and arbitrarily terminated his services, which according to him is illegal. He had sought reinstatement in service with full back wages.

4. The respondent No. 1 bank's stand was that the petitioner was in the habit of taking leave from the date of his appointment and many times on loss of pay also. The leave taken by the petitioner was not sanctioned. He did not comply with the provisions of the Service Rules. According to respondent No. 1 bank, he failed to report back on expiry of the period which he had mentioned in his leave letter. After keeping silent for over a long period by letter dated June 11, 1982, he sought further extension of leave. Since he had no leave to his credit, his request could not be acceded to. The father of the petitioner had given authorization letter dated April 26, 1982 to deduct all loan instalment availed by his son from his S.B. Bank Account No. 5359. On May 15, 1982 the mother of the petitioner had given an undertaking letter to recover the loan amount availed by her son from her S.B. Account. The bank had sent a telegram dated July 28, 1982 calling upon the petitioner to report for duty immediately with a rider to show cause why disciplinary action should not be taken against him. This was followed by a letter of the same date. No response was received on the letter dated July 28, 1982. The respondent No. 1 bank again written a letter dated September 13, 1982 wherein it by referring to its earlier telegram dated July 28, 1982 had called upon the petitioner to show cause as to why his services should not be terminated under medical grounds. Against this also, no response was received by the bank. The respondent No. 1 bank, therefore, terminated the services of the petitioner with effect from December 13, 1982 after the expiry of the notice period. It was the case of the respondent No. 1 bank that the petitioner was not interested in joining the duties and had left for USA without getting the leave sanctioned from the respondent No. 1 bank.

5. The parties had led their evidence and filed affidavits in support of their stand. The Tribunal had in the impugned order inter-alia concluded that the action of the respondent No. 1 bank in terminating the services of the petitioner was fully justified.

6. Learned counsel for the petitioner would submit that the communication/show cause notice dated July 28, 1982/September 30, 1982 nor the termination letter dated December 13, 1982 had been received by the petitioner. According to him, since he had sent the medical certificates dated June 10, 1982, dated June 20, 1983, July 15, 1982, September 01, 1982 and no response was received,

rejecting the same, he was under the bona-fide impression that the leave has been granted. In any case, he would also submit that the absence was not wilful so as to entail termination from service. He would further submit that the show cause notice issued to him was for terminating the services was on medical grounds, whereas in fact the termination was effected for absenteeism. He would rely upon the judgment of the Supreme Court reported as JT D.K. Yadav Vs. J.M.A. Industries Ltd., Managing Committee Daisy Dales Sr. Section School and Another Vs. Rajinder Singh Malik and Others Krushnakant B. Parmar Vs. Union of India (UOI) and Another, ., 1986 (53) FLR 523 Central Inland Water Transport Corporation Ltd. Vs. Brojonath Ganguly & Tarunkanty Sen Gupta Delhi Transport Corporation Vs. Shri Krishan Pal

7. On the other hand, learned counsel appearing for the respondent No. 1 bank would support the order of the Tribunal. According to him, the petitioner has not come with clean hands and had made a false case that he has not received the communication from the bank dated July 28, 1982/September 30, 1982, termination order December 13, 1982. According to him, the petitioner had admitted these documents before the Tribunal. He has drawn my attention to the reply filed by the bank to urge the callous attitude of the petitioner in remaining unauthorizedly absent for such a long period of time. The respondent No. 1 bank has taken all steps which were required by it to call upon the petitioner to come and join the duties. Despite receipt of the same, he had shown a very indifferent attitude. According to him, the case in hand is a case of wilful absence inasmuch the petitioner left for USA without getting the leave sanctioned. According to him, the petitioner had furnished only the photocopies of medical certificate on March/September, 1984 long after receipt of letter of termination of his service. In other words, it is the case of the bank that none of the certificates were ever received by it. He would submit that the bank has rightly invoked para 522(i) of Shastri Award and 3(iii)(a) of settlement dated October 31, 1979 between the bank and its workmen. He would also draw my attention to para 12.1 to 12.4 of the settlement dated December 14, 1966 which inter-alia stipulated that if an employee who desires to obtain leave of absence shall apply in writing to the agent or any other officer which shall be made not less than one month before the date from which the leave is to commence except in urgent cases or enforcing circumstances including illness when it is not possible to do so. Once a leave is granted, the period of leave shall also be communicated to the officer concerned. He has further drawn my attention to the cross examination of the petitioner wherein the petitioner admits that he did not have any written permission for going abroad but was orally told by Mr. Vinay Tirathan to go.

8. Having considered the rival submissions advanced on behalf of the parties, it is noted that the petitioner had left for USA without getting the leave sanctioned. I note that the application for leave was dated April 07, 1982. He left for USA two days thereafter on April 09, 1982. Surely a person who is travelling to USA would plan his visit like obtaining Visa and purchasing ticket much in advance. It appears that the petitioner had intentionally submitted the application of leave

only 2 days before departure to complete a formality, in violation of the rules which stipulate that a leave must be sought one month in advance unless it is a case of an emergency. In this case, assuming that the petitioner had gone to render assistance to cousin sister who was in a family way, cannot be termed as a case of emergency so as to leave urgently within a period of 2 days from the date of submitting the application for leave.

9. That apart despite communication from the bank the petitioner has not even cared to respond to the letters. Regrettably, a false case is set up that in view of wrong mentioning of the address of New York he had not received the said communications. The said case falls to the ground through his own conduct inasmuch as the Authorized Representative of the petitioner has admitted those documents before the Tribunal. In other words, the receipt of the documents in question and the contents thereof are admitted. This itself is a ground enough for this Court to refuse to exercise jurisdiction u/s 226 of Constitution of India.

10. Insofar as the submission of learned counsel for the petitioner that the reason for termination of the petitioner was different from the reason given in the show cause notice, I am of the view that the same is of no consequence nor caused any prejudice to the petitioner, when despite receipt of the show cause notice dated September 13, 1982 the petitioner had not cared to send reply to the same, justifying his absence on medical grounds. As the stand of the respondent No. 1 bank being, that the petitioner had submitted the certificates only in the month of March/September, 1984 much after the termination, itself would show, that extension of leave earlier sought by him on medical grounds was only a ploy without any supporting evidence. The absenteeism of the petitioner being without any justification/valid reason the respondent No. 1 bank had rightly terminated the services on the said ground. In other words, medical grounds not being genuine leading to absenteeism is the reason for termination of the services of the petitioner.

11. I further note that the non-receipt of the communication from the bank on the plea of wrong mentioning of the address would also not sustain inasmuch as the certificates which the petitioner had submitted to the bank were only in the month of March/September, 1984 much after his termination was effected. A perusal would reveal that the petitioner had submitted the certificates from medical practitioners based in Pennsylvania and Washington D.C. which are different places away from New York. In other words, the petitioner was not stationed in New York while living in USA at least during the period when he was alleged to be unwell, casts doubt about the genuineness of the plea of being unwell.

12. That apart I note the reason for seeking leave initially to attend to his cousin sister who is in family way appears to be, not genuine. When a female is in the family way, surely the assistance of a female would be more appropriate than a male member of the family. Further the fact that the father and mother of the petitioner had given undertakings/authorization in the month of April/May, 1982

itself to the bank for deduction of loan instalment from their account indicates that the petitioner had gone to the USA with an intention not to return back immediately.

13. I note that the services of the petitioner were terminated by the Chief Manager vide his letter dated December 13, 1982. The termination letter was sent to his USA address. A printed application form for refund of Staff Provident Fund Contribution was also sent to his USA address. The petitioner by his own handwriting through his letter dated June 06, 1983 acknowledge the receipt of the printed form. In the said letter, the petitioner had not raised any objection of his termination but requested the respondent to settle the provident fund and credit the amount in his personal account. Along with his letter the petitioner enclosed a duly filled form for refund of the provident fund. It is the stand of the respondent No. 1 bank that it had taken the following steps settling his provident fund and other benefit:

(a) By Memorandum of Trustees dated July 20, 1983 sanction was accorded to refund the Staff Provident Fund Contribution.

(b) A letter dated June 26, 1984 was sent by the Manager, New Rajendra Nagar Branch to the Personal Department, Central Office, Madras informing them the appropriation of the provident fund amount of the petitioner against personal loan.

(c) Before that on August 10, 1983 letter was sent by the Central Office, Madras to the Rajendra Nagar Branch informing the credit of the provident fund in New Rajendra Nagar Branch account.

(d) The Staff Provident Fund Member Ledger of the petitioner contains an endorsement showing that the account was closed on August 10, 1983 and the amount was credit to Rajendra Nagar Branch vide trustees sanction dated July 26, 1983.

14. The petitioner finally settled his dues with the bank after his termination without any objection. I find that the petitioner had raised an industrial dispute after a period of 8 years and during that period the petitioner has been travelling abroad quite frequently which is clear from the endorsements on his passport.

15. During the course of arguments, learned counsel for the petitioner would submit that the petitioner had taken the citizenship of USA. According to him, taking the citizenship of USA would not preclude the petitioner from taking an employment in a nationalized bank. No rule/regulation has been placed before me in support of his contention. Be that as it may, I find that during the Tribunal while adjudicating the reference has called upon the petitioner to place on record the copy of the passport issued to him. The petitioner had filed passport issued on November 08, 1982 in New York. According to him, the passport earlier issued to him in the year 1976 got lost. Further I find from the perusal of the photocopy of the passport issued in the year 1989 he has been travelling abroad frequently

(at page 215 of the Lower Court Record), and the immigration stamp shows that he was admitted by the immigration authorities after processing his case for I-551, temporary evidence of lawful admission for permanent residence until December 26, 1992 employment authorized. The kind of a visa which was granted to the petitioner is a sufficient evidence to show that he was a permanent resident of the USA even after his services stood terminated in the year 1982. The dispute raised by him was not with an intention to come back to the employment of the bank. It is not a litigation by a bona fide litigant.

16. Insofar as the judgments relied upon by the counsel for the petitioner are concerned, in D.K. Yadav's case (supra) the Supreme Court was concerned with a case where petitioner services were terminated by invoking clause 13(2)(iv) of the Standing Orders which inter-alia contemplates that if a workman remain absent without sanctioned leave or beyond a period, granted, subsequently extended, he shall lose his lien on his appointment unless he returns within 8 calendar days and explain to the satisfaction the reasons for his absence. The Supreme Court has held that the principles of natural justice must be read into the rule, as such, a rule deprives a person the right to livelihood. In the present case, I find the issuance of show cause notice dated September 13, 1982 is itself compliance of principles of natural justice. Moreover a person who choose not to reply to show cause notice cannot urge the violation of principles of natural justice. As it is the stand of the respondent No. 1 bank, the medical certificates were submitted by the petitioner in the month of March/September, 1984, which itself suggest that in the absence of any justification for the absenteeism the respondent were within their right to terminate the services of the petitioner invoking para 522(i) of Shastri Award and 3(iii)(a) of Settlement dated October 31, 1979.

17. Insofar as the reliance on the judgment of this Court in Rajender Malik's case (supra) is concerned, the same shall not be applicable. The petitioner has not challenged the vires of the provision which was invoked for terminating the services. The rule as it exists had been invoked by the respondent No. 1 bank in terminating the services of the petitioner. In any case I hold that the issuance of show cause notice is a sufficient compliance of principles of natural justice which recourse was not utilized by the petitioner by giving a reply to the same.

18. Insofar as the judgment in Krushnakant B. Parmar's case (supra) is concerned, the Supreme Court has held the unauthorized absence from the 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. In the present case as I have held that the absence of the petitioner was wilful, the judgment of the Supreme Court on which reliance has been placed would have no applicability.

19. Insofar as the judgment of the Supreme Court in Brojonath Ganguly's case (supra) is concerned, I have already held that the vires of the provision has not been challenged by the petitioner. He has only challenged the action of the

respondent No. 1 bank on facts. I find, the reasons for termination have been specified by the respondent No. 1 Bank in the show cause notice. Despite the receipt of the same, the petitioner had not cared to reply the show cause notice. He cannot even urge that the provision invoked by the respondent No. 1 Bank is unconscionable being violative of Section 23 of the Contract Act. In the given facts of this case, the reliance placed by the petitioner in Brojonath Ganguly and Tarunkanty Sen Gupta's case (supra) is misplaced. Keeping in view the aforesaid conclusion, I do not find any merit in the writ petition. The same is dismissed. No costs.