

(2002) 10 P&H CK 0036

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 4418 of 2001

State Bank of Patiala

APPELLANT

Vs

Murti Singh Negi

RESPONDENT

Date of Decision: Oct. 8, 2002

Citation: (2003) 3 LLJ 391 : (2003) 133 PLR 474 : (2002) 4 RCR(Civil) 1034

Hon'ble Judges: M.L. Singhal, J

Bench: Single Bench

Advocate: Ajay Tiwari, for the Appellant; R.N. Raina, for the Respondent

Final Decision: Allowed

Judgement

M.L. Singhal, J.

Murti Singh joined as peon in the State Bank of Patiala on 1.6.1974. He was promoted to the post of Clerk-cum-Cashier on 13.8.1974. He applied for leave w.e.f. 2.7.1974 to 12.7.1994 due to illness of his wife. As his wife did not recover from illness, he requested the Bank to extend his leave up to 23.7.1994. At that time, he was posted in the State Bank of Patiala, Sector 35-C, Chandigarh. On 25.7.1994, he went to the office for submitting his joining report. He was not allowed to join duty and was directed to approach the office of the Assistant General Manager, Chandigarh, who too did not allow him to join duty. On 4.11.1994, he received letter whereby he was retired from service and was directed to deposit one month's salary in lieu of notice. He filed suit for declaration against the State Bank of Patiala, the Mall Patiala through its General Manager in the Civil Court at Patiala. He challenged order dated 4.11.1994 whereby he was retired from service with the direction to deposit one month's salary in lieu of notice. It was alleged in the plaint that the order was illegal, ultra vires, mala fide, unconstitutional, without jurisdiction, penal in nature, discriminatory in character, arbitrary capricious and against the principles of natural justice and the rules and regulations of the Bank governing his service. It was further alleged that notwithstanding the said illegal order, he was entitled to continue on the post of Clerk-cum-Cashier with all rights

and benefits and privileges including arrears of pay and allowances with interest @ 18% per annum compoundable annually which he would have drawn/enjoyed if the said order had not been passed. It was alleged that allegation of absence from duty amounts to mis-conduct which could be established against him only after enquiry. In this case, no regular enquiry was conducted against him. Order of retirement is punitive in character attaching stigma to him.

2. Defendant-Bank contested the suit of the plaintiff urging that there is Bipartite Settlement which governs the plaintiffs and the Bank. Bank is an "Industry". Civil Court had no jurisdiction. He joined as a Peon-cum-Frasher to start with. As such, he was a "workman". On rejection of the leave application, he was informed by means of letter No. 412 dated 12.7.1994 that as leave of any kind could not be claimed as of right and no extension of leave could be deemed to have been sanctioned unless order to that effect was passed and communicated to the employee concerned. He was asked to report for duty. Instead of reporting for duty, he remained absent unauthorisedly thereafter also. He had been unauthorisedly absenting from 7.2.1994 to 10.6.1994. During that period, he was served with two registered notices dated 8.3.1994 and 11.4.1994 advising him that his unauthorised absence would result into voluntary cessation of service but taking lenient view into the matter, the Chief Manager of the Bank allowed the plaintiff to join duty on 11.6.1994. He again absented himself unauthorisedly w.e.f. 2.7.1994 onwards. On account of his absence, registered notices dated 14.7.1994 and 13.8.1994 were served upon him advising him to report for duty within 30 days of the date of notice failing which he was further advised that he will be deemed to have voluntarily retired from the Bank's service on the expiry of the period of notice. Further, he will also be liable to pay to the Bank one month's pay and allowances in lieu of notice. In spite of all the said notices, he did not report for duty within the stipulated period. Finally, by letter dated 4.11.1994, he was advised of his having voluntarily retired from his service of the defendant-Bank according to the provisions of the Bipartite Settlement/Award. There was no necessity of holding any enquiry against him. Order of voluntary retirement was passed by the Bank in accordance with the service rules.

3. On the pleadings of the parties, the following issues were framed :-

1. Whether the plaintiff is entitled to decree of declaration as prayed for? OPP.
2. Whether the Civil Court has got no jurisdiction to try the present suit ? OPD.
3. Whether the plaintiff has no cause of action to file the present suit ? OPD.
4. Relief.

4. In this Regular Second Appeal, the following questions of law arises :-

"Whether respondent plaintiff was entitled to any opportunity of hearing before the impugned order dated 4.11.1994 was passed despite the Bipartite Settlement."

5. Vide order dated 20.5.1999, Civil Judge (Junior Division), Patiala dismissed the suit. In view of his findings that the Civil Court had no jurisdiction as the plaintiff was a workman, governed by the Award/Bipartite Settlement and the Bank is an "Industry", within the definition of "Industry" as understood in the Industrial Disputes Act, 1947, it was found that there was full compliance of the principles of natural justice before order was passed culminating into cessation of his service.

6. Plaintiff went in appeal which was allowed by the Additional District Judge, Patiala vide order dated 3.8.2001 whereby he decreed the suit for declaration as prayed.

7. Not satisfied with the decision of the Addl. District Judge, Patiala dated 3.8.2001, Bank has come up in appeal to this Court. It was submitted by the learned counsel for the appellant that there had been complete observance of the principles of natural justice so far as the respondent is concerned before the impugned order was passed which brought about voluntary cessation of his service with the appellant Bank, it was submitted that he applied for leave from 2.7.1994 to 12.7.1994. His application for leave was rejected by the Chief Manager of the Bank. On rejection of his leave application, he was informed by means of letter No. 412 dated 12.7.1994 that leave of any kind could not be claimed as of right and no leave or extension of leave could be deemed to have been sanctioned unless order to that effect was passed and duly communicated to him. He was asked to report for duty, Instead of reporting for duty, he remained absent unauthorisedly thereafter also. It was submitted that previously also he remained absent w.e.f. 7.2.1994 to 10.6.1994 unauthorisedly. Although he was served with two registered notices dated 8.3.1994 and 11.4.1994, he did not come present. Chief Manager of the concerned branch took lenient view and allowed him to join duty on 11.6.1994. He again absented unauthorisedly w.e.f. 2.7.1994 onwards. On account of his absence, the Bank served upon him registered letters dated 14.7.1994 and 13.8.1994 advising him to report for duty at the said branch of the Bank within 30 days of the date of notice, failing which it will be deemed that he had voluntarily retired. On the expiry of the period of notices, he will also be liable to pay one month's salary and allowances in lieu of notice. He did not report for duty despite these notices within the stipulated period. He was finally advised by registered letter dated 4.11.1994 having retired from defendant Bank w.e.f. 12.9.1994 according to the provisions of "Award/Bipartite Settlement. It was submitted that the voluntarily cessation of service of the plaintiff was in accordance with the law and provisions of "Award/Bipartite Settlement" as modified from time to time. It was submitted that the Award/Bipartite Settlement regulates the service conditions of the plaintiff. "Award/Bipartite Settlement" provides for voluntarily cessation of enjoyment in the event of unauthorised absence from duty. There is a self contained procedure in the Award/Bipartite Settlement, which was followed in this case. It was submitted that no charge-sheet was required to be issued to him and no enquiry was necessary as per the conditions of his service. In Punjab and Sind Bank and Ors. vs. Sakattar Singh 2001(1) RST 73 the Hon"ble Supreme Court held that where any employee of the

Bank had default in not offering any explanation regarding his unauthorised absence from duty nor did he place any material to show that he reported for duty within 30 days of notice as required by Clause XVI of IV Bipartite Settlement, it cannot be said that there was non compliance of the principles of natural justice. It was submitted that in view of the Clause XVI of IV Bipartite Settlement, the Bank could put an end to the service of the respondent even without enquiry. In [Syndicate Bank Vs. The General Secretary, Syndicate Bank Staff Association and Another](#), where on a similar charge, a Bank employee unauthorisedly absented himself from work for a period exceeding the prescribed limit of 90 days and the bank having served notice upon him, requiring him to submit explanation to join work within the prescribed period of 30 days otherwise he would be deemed to have retired, was held to be good and such action is not violative of the principles of natural justice.

8. If the respondent had submitted an explanation regarding his unauthorised absence or placed any material before the Court that "he did report for duty, but was not allowed to join duty, enquiry may have been necessitated but not otherwise". In this case, the respondent failed to join duty despite registered notices dated 14.7.1994 and 13.8.1994 advising him to report for duty within 30 days from the date of notice failing which he will be deemed to have voluntarily retired from service on the expiry of the period of notice!

9. So far as Banks are concerned, they have their own "Bipartite Settlement" between the Bank on the one hand and its employees on the other hand, which regulates inter se their relations of master and servant. Learned counsel for the respondent on the other hand submitted that there could not be any automatic termination. In *Scooters India Ltd. v. M. Mohammad Yaqub* 2001(1) S.C.T. 212, it was held that even if certain standing orders are there, yet the employee must be given opportunity to explain his absence from duty and automatic termination without giving a chance to explain sufficient cause for his absence without leave, is violative of the principles of natural justice and termination cannot be held to be a legal one rather an illegal one.

10. Suffice it to say, "Bipartite Settlement" entered into between the bank and its staff, is binding on them. Neither the bank or the staff can wriggle out of what has been laid down in the "Bipartite Settlement",

11. Banks are commercial institutions. It is with a view to promote discipline and efficiency that the Bipartite Settlement is providing that unauthorised absence for such period, will bring about automatic abandonment of service. "Bipartite Settlement" has to be viewed as sacrosanct.

12. For the reasons given above, this appeal succeeds and is accordingly allowed and in consequence judgment and decree passed by the Addl. District Judge dated 3.8.2001 are set aside and those passed by the Civil Judge (Junior Division), Patiala dated 20.5.1999 are restored. Plaintiffs suit is dismissed. No order as to costs.