

(2010) 01 P&H CK 0210

High Court Of Punjab And Haryana At Chandigarh

Case No: None

State Bank of India and Others

APPELLANT

Vs

Ram Singh

RESPONDENT

Date of Decision: Jan. 22, 2010

Citation: (2010) 159 PLR 350

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ranjit Singh, J.

The appellant-Bank has filed this appeal against the judgment of the first Appellate Court, which has reversed the judgment passed by the Trial Court, dismissing the suit filed by the respondent employee. The appellant-Bank with vast resources at its command would not hesitate to contest any claim whether justified or not. Appellant-Bank would plead that following substantial question of law would emerge in this case:

- (i) Whether the action of the Appellant-Bank was valid as per the standing order?
- (ii) Whether the action of the Appellant-Bank in voluntarily retiring the respondent-plaintiff was valid?
- (iii) Whether the jurisdiction of the learned Civil Court was barred under law?
- (iv) Whether the relief can be given beyond pleadings and in the absence of the challenge to the standing order/regulations?

2. None of these, however, were pressed into service at the time of issuing notice of motion. At that time, reliance was placed only on the judgment in the case of R. Jeevaratnam Vs. The State of Madras, to submit that even if it is assumed that one part of the impugned order qua the retrospective retirement of the respondent was bad, it was not apparent from the other part of the order that it could not be

independently faulted. While issuing notice of motion, this Court, stayed the operation of the impugned judgment and decree. Thus, the grounds regarding validity of the action as per the standing order or the validity of the order voluntarily retiring the respondent-plaintiff and the jurisdiction of the Civil Court being barred or that the relief beyond the pleadings etc. were never pressed into service. Even now at the time of arguments, the only ground pressed before me is about the validity of the voluntary retirement order in terms of the standing order on the basis of Bipartite Settlements.

3. First the facts in brief to get the hang of the issue may be noticed.

4. The respondent-plaintiff had joined the services of the appellant on 10.11.1987 as Messenger and on completion of probation had become permanent and regular employee of the appellant Bank. He could not attend to his duties w.e.f. 1.8.1999 as he was advised rest on account of ailment. After recovery from illness, he submitted his joining report alongwith his medical certificates but was not allowed to join duties by the appellant Bank. The appellant would plead that the respondent-plaintiff was directed to join duties through order dated 28.12.1999 within 30 days and was also cautioned that in the event of failure to do so, he would be deemed to have voluntarily retired from service after expiry of the notice period. Another letter was initiated on 10.2.2000, through which the respondent-plaintiff was informed that since he had failed to join duties by 28.1.2000, he stood voluntarily retired from service w.e.f. 29.1.2000 in view of the deeming provisions in this regard. He was also asked to deposit salary of 14 days with the Bank. Strangely he received another communication dated 9.5.2000 informing that he was considered voluntarily retired from service w.e.f. 1.8.1999.

5. The respondent-plaintiff accordingly had impugned the orders dated 28.12.1999, 10.2.2000, 19.4.2000 and 9.5.2000 on various grounds to plead that the orders have been passed without application of mind. The plea raised is that he was specifically informed through order dated 28.12.1999 that he would be deemed to be retired within 30 days of the expiry of notice but again through communication dated 10.2.2000 and 19.4.2000, he was considered to have voluntarily retired from service on 29.1.2000 and yet again, he was informed that he would be deemed to have voluntarily retired w.e.f. 1.8.1999 through a communication dated 9.5.2000. The respondent-plaintiff would also make reference to the fact that he had received a letter on 19.4.2000, requiring him to join camp for promotion w.e.f 24.4.2000 to 29.4.2000. He would accordingly plead that order of voluntarily retirement was not passed by the competent authority and while so doing, no charge sheet has been issued, no enquiry was held and, thus, the respondent-plaintiff was eased out of service without complying with the provisions of the Service Rules.

6. The Bank, while defending the suit, has pointed out in the written statement that the respondent-plaintiff had willfully absented from duty from 4.12.1990 to 1996 but still by taking lenient view, his unauthorised leave for 682 days was sanctioned by

the Bank by awarding minor punishment of censure. It is pointed out that the respondent-plaintiff is engaged in business of sale and purchase of buffaloes and so he had absented from service continuously w.e.f 1.8.1999 without any prior intimation. He was asked to resume duties within 3 days but all in vain. Another letter was sent to him on 13.10.1999, requesting him to resume his duties within 4 days, which was also not obeyed. Yet another letter was issued on 8.11.1999, requiring him to resume duties but without any result. The Bank had then sent a registered letter to the respondent-plaintiff on 28.12.1999 on the prescribed format, directing him to resume duties within 30 days from the date of notice, failing which he will be deemed to have been voluntarily retired from service. Another letter was sent to him on 10.2.2000 but he failed to resume duties. Ultimately a letter, was sent on 19.4.2000 through registered post to apprise the respondent-plaintiff that since he had failed to report for duty by 28.1.2000, he would be deemed to be voluntarily retired from service from 29.1.2000. In this letter, he was also called upon to deposit one month's pay and allowances within 15 days of receipt of notice but still the respondent-plaintiff did not turn up. Yet another letter was issued on 9.5.2000, vide which the respondent-plaintiff was informed that he had been considered voluntarily retired from service on 1.8.1999. Accordingly, he was informed through letter dated 8.8.2000 that since he has voluntarily abandoned the service, he should submit the papers for clearing his terminal dues but still, the respondent did not take any action. The appellant Bank has accordingly pleaded that the respondent-plaintiff was correctly treated to have voluntarily retired from service of the Bank, which is in accordance with the Service Rules as provided under Voluntary Cessation of Employment by the Employees in Settlement dated 8th September, 1993. The suit was tried on the following issues:

1. Whether the orders dated 28.12.1999, 10.2.2000, 19.4.2000 and 9.5.2000 passed by the defendant is illegal, null and void against the service rules against the principle of natural justice and are not binding upon the rights of plaintiff? OPP
2. If issue No. 1 is proved, whether the defendants should be directed to release the salary and other benefits of the plaintiff? OPP
3. Whether the plaintiff is entitled to join the duty with promotion? OPP
4. Whether the plaintiff has no cause of action against the defendants? OPD
5. Whether the plaintiff has no locns-standi to file the present suit? OPD
6. Whether the plaintiff has not come to the court within clean hands and has suppressed the true and material facts from the Court?
7. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
8. Whether the Civil Court has got no jurisdiction to try and entertain the present suit? OPD

9. Whether the suit of plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD

10. Relief.

7. Suit having been dismissed, the respondent-plaintiff filed an appeal, which was allowed and accordingly, the Bank has filed this Regular Second Appeal.

8. The whole stand of the appellant before the first Appellate Court and so also before this Court is that the action of treating the respondent-plaintiff to have voluntarily retired is on the basis of relevant agreed clause of Bipartite Settlements held between the association of employees of the Bank and the appellant-Bank. In fact, this relevant clause applicable in this case, which was invoked by the Bank has been reproduced in the impugned judgment and reads as under:

Where an employee has not submitted any application for leave and absents himself from work for a period of 90 or more consecutive days without or beyond any leave to his credit or absents himself for 90 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended or where there is satisfactory evidence that he has taken up employment in India or the management is satisfied that he has no present intention of joining services the management may at any time thereafter give a notice to the employee's last known address calling upon the employee to report for duty within 30 days of the notice, stating inter-alia, the grounds for the management coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days or unless he gives an explanation for his absence satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service. In case of an employee who has gone abroad, and has not submitted any application for leave and absents himself for a period of 150 or more consecutive days without or beyond any leave to his credit or absents himself for 150 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended and where the management has reasons to believe that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee's last known address calling upon the employee to report for duty within 30 days of the notice. Unless the employee reports for duty within 30 days or unless he gives an explanation for his absence satisfying the management, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of expiry of aforesaid notice without

prejudice to the bank's right to take any action under the law or rules of service.

9. The entire basis of the claim of the appellant Bank, thus, is on this clause of the settlement, which was also pressed into service before this Court while making submissions. The support is also sought from the law laid down by the Hon'ble Supreme Court in the case titled Syndicate Bank Vs. The General Secretary, Syndicate Bank Stff Association and Another, to say that termination of the services of an employee on the ground of unauthorized absence from duty would not require any enquiry in view of the law laid down by the Hon'ble Supreme Court in this case. The first Appellate Court, however, did not accept this line of submission made by the appellant Bank and non-suited the Bank primarily by observing that the requirement of principle of natural justice was still required to be followed, as it would emerge so from the ratio of law laid down in the case of Syndicate Bank (supra), where Clause 16 of the Bipartite Settlements, which is similar to the one reproduced above, was upheld. This aspect of the issue was not highlighted by the Learned Counsel for the appellant while making submission at the stage of issuance of notice of motion and the plea raised at that time, as already noted above, were on different lines. This does not seem to be an innocent change of track but seems to have been done with a purpose.

10. When appearance was put on behalf of the respondent plaintiff after issuance of notice of motion, the Counsel for the respondent-plaintiff submitted before this Court on 11.2.2008 that Clause 16 of the Bipartite Settlements dated 17.9.1984 pressed into service by the appellant were not in force at the relevant time. The Counsel for the appellant had then sought time to verify this fact. The order passed by the Court on 11.2.2008 is as under:

Learned Counsel for the respondent contends that Clause 16 of bipartite settlement dated 17.9.1984 was not in force at the relevant time.

Learned Counsel for the appellants seeks time to verify facts.

Adjourned to 03.04.2008.

11. Thereafter, the case was adjourned on number of occasions but no reference was made to the instructions that might have been received by the Counsel for the appellant. In the meantime, the respondent-plaintiff had also filed Cross Objections to challenge that part of the judgment through which the relief of back wages was denied to him. Initially, notice of the application for condonation of delay in filing the Cross Objections was issued. It appears that no order thereafter was passed for condoning the delay in filing the Cross Objections. Later, the record of the Trial Court was summoned. Ultimately, submissions were made on 8.1.2010, when the Counsel for the respondent pointed out before the Court that the Counsel for the appellant had taken time to have instructions in regard to the applicability of Clause 16 of the Bipartite Settlements and without making any submission in this regard, the Counsel was going ahead to make submission on the basis of the same Clause.

12. This conduct of the appellant can not be appreciated, especially so when the Learned Counsel for the respondent successfully points out that this clause relied upon by the appellant's Counsel was not in force at the relevant point of time. Counsel for the respondent refers to the fact that Bipartite Settlements is a set of conditions arrived at between the Bank and the Class III and Class IV employees, which governs their conditions of employment. Accordingly, the Counsel would submit that though this notice was bad on many other grounds but needed to be set-aside primarily on the plea that the clause of voluntarily cessation of employment by an employee and the action taken by the Bank on the basis of this clause could not have validly been taken since this clause was not in force at the relevant time when this action was taken against the respondent-plaintiff. Learned Counsel would point out that in the year 1999 and 2000, when these notices were issued to the respondent plaintiff, 7th Bipartite Settlement was in force, which was to be valid for a period of five years w.e.f 1.11.1997. Counsel for the respondent has placed before me the memoranda of settlement dated 27.3.2000 between the management of the Bank and the Association of workmen, which was to be effective retrospectively w.e.f. 1.11.1997. As per Clause 33 of this 7th Bipartite Settlement, Clause 17th of Voluntary Cessation of Employment in the 5th Bipartite Settlement dated 10.4.1989 was deleted. Clause 33 of this Settlement reads as under:

Voluntary Cessation of Employment : Clause 17 of the fifth Bipartite Settlement dated 10th April, 1989 shall stand deleted.

13. The Counsel would also refer to Clause 37 of this settlement, which talks about the date of effect and operation of the settlement to be for five years from 1.11.1997. Clause 37 (i) reads as under:

37. Date of effect and operation:

(i) This Settlement shall be binding on the parties for five years from 1st November, 1997. Six months before the Settlement expires, the Unions may submit their charter of demands to the IBA. The negotiations will commence before the last three months of the expiry of the settlement.

14. The Counsel, thus, is fully justified in submitting that this clause of voluntary cessation was not in operation and could not have been relied upon or put to use by the appellant Bank at the relevant point of time, when the notices were issued to seemingly retire the respondent-plaintiff voluntarily. He would, thus, submit that the whole line of submissions made by Learned Counsel for the appellant was misleading and so it is an attempt on the part of the Bank to mislead this Court.

15. When confronted with this situation, the Counsel for the appellant Bank could not offer any explanation. Though the appeal deserves to be dismissed on this short ground that an attempt was made to mislead the Court to get relief by an Organization like a Bank, still the Counsel was required to have instructions if the Bank was prepared to implement the judgment, when there was hardly any reason

to impugn the order as the very basis for which this order was passed was non-existing.

16. The case was adjourned on the request of Counsel for the appellant to have instructions. Instead of taking instructions as required, the Counsel made yet another attempt to argue the matter on the ground that the clause of 7th Bipartite Agreement deleting the clause of voluntary cessation of employment would not operate retrospectively and would operate prospectively from 27th March, 2000. This was yet another attempt to mislead the Court. The short recital recorded at the initial paragraphs of the 7th Bipartite Settlement would clearly show that this settlement was signed between I.B.A. and National Organization of Bank workers on 22.10.1997 and National Organization of Bank Workers had agreed not to seek reopening of any industrial level settlement signed subsequent to the settlement dated 25.4.1980 and as such, signed the settlement dated 28.11.1997 as one of the Union representing the workmen employees of the Bank. In any case, once this 7th Bipartite Settlement has been made operative and effective and binding on the parties for five years from 1:11.1997, it would clearly mean that this was to have a retrospective effect from this date, though may have been signed on any date in the year 2000. The Counsel for the appellant had in fact not disputed in any manner the existence of 7th Bipartite Settlement and the fact that the clause relating to power with the Bank to voluntarily retire a person on the ground of cessation of employment stood deleted. The only submission made was that this was not to apply retrospectively. This submission was again misleading and would clearly be belied from Clause 37 of the 7th Bipartite Settlement and so also from the fact that the settlement was on 22.10.1997, which perhaps is the reason that this was made effective w.e.f. 1.11.1997 for five years. The conduct of the appellant Bank, thus, in making an attempt to mislead the Court is deprecated and can not be countenanced. This is despite the fact that the Counsel for the appellant was apprised of this position as far as back on 11.2.2008. Still, every time with the change of Court, an attempt was made to side track this issue to make submissions on merits by relying on this clause of the Bipartite Settlement, regulating the power of the Bank to order voluntarily retirement on the ground of cessation of employment. This tendency on the part of public Organization like Bank needs to be curbed. There is no merit in the appeal, which otherwise would deserve to be dismissed, in view of the conduct of the appellant Bank in making an attempt to mislead the Court. The substantial question of law, as is being raised, thus, would not arise in this case. There is no other submission pressed into service on behalf of the Bank during the course of arguments.

17. The appeal is, therefore, dismissed with a special costs of Rs. 50,000/- primarily because the appellant Bank made an attempt to mislead this Court. There is also no merit in the Cross Objections filed by the respondent and he has rightly been denied the back wages since he has not worked. The Cross Objections are, therefore, dismissed on merits, though the delay in filing the same shall stand condoned.