Indian Bank Vs S. Maheswari and Another
S. Maheswari Vs Presiding Officer, Industrial Tribunal, Chennai and Another

Court: Madras High Court

Date of Decision: Jan. 11, 2011

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 7 Rule 11
Industrial Disputes Act, 1947 â€" Section 10(1), 25F
Limitation Act, 1963 â€" Section 3(1)

Citation: (2011) 3 LLJ 49

Hon'ble Judges: S. Nagamuthu, J

Bench: Single Bench

Advocate: A.L. Somayaji, SC for S. Ramasubramaniam, Associates and Ajoy Khose, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

S. Nagamuthu, J.
Since these two writ petitions arise out of the award passed by the Industrial Tribunal, Tamil Nadu, Chennai in I.D. No.

105/1992 dated April 24, 1997, they were heard together and they are disposed of by means of this common order. For the sake of convenience,

in this order, the parties are referred to in the array of parties in W.P. No. 17493/1998.

2. The Petitioner Mrs. Maheswari was appointed as a clerk cum typist in the Respondent Bank and she joined duty on February 24, 1986 at

Kumarapalayam Branch. On confirmation in services, she was transferred to the Zonal Office, Coimbatore at her request and accordingly she

joined duty on December 8, 1990. On reporting duty on December 8, 1989, the Petitioner informed that she would be availing joining time of 6

days from December 9, 1989 and report for duty on December 15, 1989. On December 15, 1989 as assured by her earlier she did not turn up

for duty. In this regard, the Zonal Office, Coimbatore of the Respondent Bank sent a letter dated December 30, 1989 to the Petitioner informing

about her unauthorized absence and asking her to report for duty forthwith. The said communication was sent to her address at Coimbatore which

was furnished by her to the Zonal Office and the same was acknowledged by her. But, she did not turn up for duty forthwith. Instead, she sent a

letter dated January 3, 1990 stating that she was suffering from pain in her vertebral column and so she was not in a position to report for duty. She

requested for leave. On receipt of the letter dated January 3, 1990, the Respondent bank sent a letter on the same day calling upon her to apply

for leave, if need be, in the prescribed format along with appropriate medical certificate. The said letter was also sent to the very same address

which was earlier furnished by her to the Zonal Office. But, there was No. response for the said letter. Again on February 2, 1990, the

Respondent bank sent another letter to the Petitioner calling upon her to submit her leave application with medical certificate within 3 days or in the

alternative to report for duty immediately. But, this letter, which was sent by way of registered post with acknowledgement due, was returned to

the Respondent bank with an endorsement by the postal authorities as ""not found"". Thereafter, on March 19, 1990, the Respondent bank sent

another letter through registered post to the Petitioner giving her 30 days time to report for duty as per Clause 17(a) of the Bi-partite settlement

and further informed that in the event of her failure to either reporting for duty or submitting any valid explanation she would be deemed to have

voluntarily retired from service on the expiry of the notice period. The said notice was sent to the very same address at Coimbatore which was also

not served. The'' notice period of 30 days expired on April 17, 1990. Therefore, in terms of Clause 17(a) of the Bi-partite settlement, a final notice

was issued on May 2, 1990 informing the Petitioner that she was deemed to have voluntarily retired from service with effect from April 17, 1990.

This notice was also not served on the Petitioner and the same was returned by the postal authorities with an endorsement ""as not found"". Thus,

according to the Respondent bank, as per Clause 17(a) of the Bi-partite settlement, the Petitioner voluntarily retired from service with effect from

April 17, 1990 and thereafter, there was No. relationship of employer and employee between the Respondent bank and the Petitioner.

3. While so, on December 26, 1990, the Petitioner sent a letter to the bank stating that she would send medical certificate in a few days. For the

first time, in the said letter, the Petitioner had given her address at Bangalore. In the said letter, she had referred to yet another letter of hers dated

February 7, 1990 informing about her change of address. But the Respondent bank denied having received any such letter dated February 7,

1990. Subsequently, on January 24, 1991, the Petitioner sent yet another letter to the Respondent bank requesting for transfer to Bangalore or any

other place at Bangalore. For the said letter, the Respondent bank sent a communication on February 4, 1991 to the Petitioner narrating the above

facts and informing her that she was No. more employed in the bank since she had voluntarily retired from service with effect from April 17, 1990

in terms of Clause 17(a) of the Bi-partite settlement. For the said letter, a reply was sent by the Petitioner on February 16, 1991 wherein she again

referred to the letter dated February 7, 1990. Thereafter, she raised an industrial dispute and the same was referred to the Government of India

vide Order No. L-12012/196/92-IR(B.II), Ministry of Labour dated December 4, 1992, Government of India, New Delhi u/s 10(1)(d) of the

Industrial Disputes Act. The dispute referred for adjudication reads as follows:

Whether the action of the management of the Indian Bank is justified in deeming Smt. Maheswari to have voluntarily retired from the bank services

with effect from April 17, 1990? If not, to what relief is the workman entitled?

Thereafter, the Industrial Tribunal, Tamil Nadu, Chennai took up the reference in I.D. No. 105/1992.

4. In the claim statement filed before the Industrial Tribunal, inter alia, the Petitioner contended that her absence from duty was not wilful. She

reiterated her stand that she was suffering from disease in her vertebral column and, therefore, she was not able to join duty on or after December

15, 1989. She further contended that due to unbearable pain and other sufferings she was not able to communicate her illness to the Respondent

bank forthwith. However, according to her, she applied for leave on January 2, 1990 and in the said leave application she informed the

Respondent bank that she would submit medical records after the treatment was over. She further claimed that as per the advise given by the

Doctor, she shifted her residence to Bangalore for taking continuous treatment. Accordingly, she had started staying at Bangalore in a temporary

address and on February 7, 1990 itself she sent a letter to the Respondent bank informing her new address at Bangalore and requesting the

Respondent bank to send all communications to the said address. She further claimed that since there was No. response to the said letter, she was

under the impression that medical leave was duly sanctioned. After the treatment was over, she sent a letter on January 25, 1990 to the

Respondent bank informing her health condition and assuring to produce the medical certificate. Again she sent a letter on January 24, 1991

enclosing the medical certificate and requesting for transfer to Bangalore city or any other place in Bangalore. It was only thereafter she received

the letter dated February 4, 1991 informing that she had already been deemed to be on voluntary retirement with effect from April 17, 1990. It is

the further contention of the Petitioner that the notice as required under Clause 17(a) of the Bi-partite settlement giving 30 days time was not

served upon her. It was the further contention of the Petitioner that the final notice dated May 2, 1990 was not served on her. She further

contended that the notice and the final notice were not sent to her address at Bangalore though she had furnished her address in Bangalore by her

letter dated February 7, 1990. Thus, according to the Petitioner, the final notice dated May 2, 1990 effecting voluntary retirement from April 17,

1990 is not valid.

5. In the counter filed before the Industrial Tribunal, the Respondent bank contended that the above two notices were sent to her last known

address at Coimbatore because that was the address furnished by her at the time when she reported for duty on December 8, 1989. Thereafter,

there was No. response to the above notice from her at all. The notice dated March 19, 1990 and final notice dated May 2, 1990, which were

sent to her last known address at Coimbatore, were all returned as not found. It was further contended that the letter dated February 7, 1990 said

to have been sent by the Petitioner to the Respondent bank informing the bank about her change of address was never received by the bank. For

the first time, in the letter dated February 16, 1991, the Petitioner had made a reference about the alleged letter) dated February 7, 1990. As a

matter of fact, No. such letter was sent on February 7, 1990. The claim of the Petitioner that a letter informing change of address was sent on

February 7, 1990 had been invented for the purpose of the case. Thus, according to the Respondent bank, the order dated May 2, 1990 effecting

voluntary retirement with effect from April 17, 1990 is valid and the same requires No. intereference.

6. In order to resolve the said dispute, the Industrial Tribunal called upon the parties to let in evidence. On the side of the Petitioner she examined

herself as W.W.1 and exhibited as many as 16 documents as Exhibit W-1 to W-16. On the side of the Respondent management, one Mr.

Hariharajan, was examined as M.W.1 and as many as 22 documents were exhibited. Having considered the above materials, the Industrial

Tribunal found that the so called letter dated February 7, 1990 (Exhibit W-6) was not really sent to the Respondent bank and the same had been

introduced only in order to put up a defence in the dispute. The Industrial Tribunal further found that the Petitioner had shown indifference in

informing the Respondent bank about her absence for a period of over one year. The Industrial Tribunal further found that all the communications

sent by the bank were rightly sent to the last known address furnished by the Petitioner to the bank on December 8, 1989. The Industrial Tribunal

further found that since the Petitioner did not turn up for duty for such a long period despite the notices sent to her, the action of the Respondent

bank in passing the final order dated May 2, 1990 effecting voluntary retirement with effect from April 7, 1990 is valid under law. However, taking

a lenient view, considering that the Petitioner was very young and a beginner in banking service, the Tribunal had shown mercy on her and directed

the bank to reinstate her in service without continuity of service and back wages.

7. Challenging that the portion of the award wherein the Tribunal has directed the Respondent bank to reinstate the Petitioner in service, the

Respondent bank has come up with W.P. No. 16490/1997. Challenging the finding of the Tribunal that the order of the Respondent bank dated

May 2, 1990 effecting voluntary retirement on the Petitioner with effect from April 7, 1990 and seeking for a consequential relief for continuity of

service and back wages, the Petitioner has come up with W.P. No. 17493/1998. That is how, both these writ petitions are now before me for

disposal.

8. The facts which are not in dispute in these two writ petitions are as follows:

(a) The Petitioner was transferred from Kumarapalayam Branch to the Zonal Office at Coimbatore. Accordingly, she reported for duty on

December 8, 1989.

(b) At the time when she reported for duty she gave her address at Coimbatore as No. 162-A, Murugaiya Thevar Colony, Arumuga Nagar,

Ramanathapuram, Coimbatore 641 45.

(c) On December 8, 1989 she informed the Respondent Bank that she would avail joining time and report for duty on December 15, 1989. But,

on or after December 15, 1989, she did not turn up for duty at all.

(d) On December 30, 1989, the Respondent bank sent a letter to the above address calling upon the Petitioner to join duty forthwith and the same

was received by her.

(e) On January 3, 1990, the Petitioner sent a letter to the Respondent bank seeking leave until recovery from her illness. In the said letter, she had

given the very same address at Coimbatore.

(f) On January 3, 1990, the Respondent bank sent a letter to the very same address at Coimbatore calling upon her to submit her leave application

in a proper format along with medical certificate. According to the Petitioner, it was not received by her. The crucial notice dated March 19, 1990

calling upon the Petitioner to join duty within 30 days in terms of Clause 17(a) of the Bipartite settlement and the final notice dated May 2, 1990

were sent by registered post to the address of the Petitioner at Coimbatore. But the same were not served on her and they were returned as ""she

was not found

9. The disputed facts are as follows:

On February 7, 1990 itself the Petitioner sent a letter to the Respondent bank informing her new address at Bangalore. But, according to the

Respondent bank, this letter was not at all received by them. According to the Petitioner, since the crucial notices dated March 19, 1990 and May

2, 1990 were not sent to he address at Bangalore as intimated by her in her letter dated February 7, 1990, they were not in compliance of terms

and conditions of Clause 17(a) of the Bipartite Settlement.

10. With the above admitted facts as well as disputed facts, let me, now, look into Clause 17(a) of the Bipartite Settlement which is very crucial for

a just decision in these writ petitions. The Clause 17(a) reads as follows:

17(a) When an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or

for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/subsequently or when there is a satisfactory

evidence that he has taken up employment in India or when management is reasonably satisfied that he has No. intention of joining duties, the

management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days

of the date of the notice, stating inter alia grounds for 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 of the notice or gives an explanation for his absence

within the said period of 30 days satisfying the management that he has not taken up another employment or vocation 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 the 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.

(emphasis supplied)

11. Referring the above clause, during the course of argument, the learned Counsel appearing for the Petitioner would submit that the impugned

order of the Respondent bank, declaring the Petitioner deemed to have voluntarily retired, is wholly without jurisdiction. According to him, in order

to acquire jurisdiction to issue any order under Clause 17(a) of the Bipartite Settlement, the Respondent bank should have essentially satisfied the

following requirements:

(i) The employee should have been absent from duty for a period of 90 days or more consecutively without submitting any application for leave or

for its extension or without any leave to his credit or beyond the period of leave sanctioned originally.

(ii) There should have been a reasonable satisfaction on the part of the management that the employee had No. intention of joining duty.

(iii) On recording such satisfaction, the management should have issued a notice calling upon the employee to report for duty within a period of 30

days from the date of notice.

(iv) The notice should contain, inter alia, the ground for coming to the conclusion that the employee had No. intention of joining duty.

(v) The notice should furnish necessary evidences for such conclusion which are available at the hands of the management.

12. According to the learned Counsel appearing for the Petitioner, in this case, except the first requirement, the rest of the requirements were not at

all satisfied by the Respondent bank and thus, the impugned order is not only bad in law, but also, wholly without jurisdiction.

13. But, the learned senior counsel appearing for the Respondent bank would submit that this is a new plea introduced for the first time only during

the course of argument by the Petitioner which is not permissible under law. According to the learned senior counsel, such a new plea in respect of

validity of the notice was neither raised before the Industrial Tribunal nor raised as a ground in the writ petition. Further, he would contend that in

the absence of any plea taken either before the Industrial Tribunal or raised as a ground in the writ petition, this Court cannot be called upon to

decide the said question in vacuum. Thus, according to the learned senior counsel, the said contention is liable to be rejected.

14. Since the whole exercise depends upon the validity of the notice issued in terms of Clause 17(a) of the Bipartite Settlement, I am of the view

that it is absolutely necessary for me to examine the above rival contentions at first. In this regard, the learned Counsel on either side have placed

reliance on a number of judgments of the Hon"ble Supreme Court about which I would make reference at the appropriate stages of this order.

15. Indisputably, the validity of the notice dated March 19, 1990 wherein the Respondent bank had called upon the Petitioner to report for duty

within a period of 30 days had/has not been neither raised before the Industrial Tribunal nor raised as a ground in the memorandum of grounds in

the writ petition.

16. But, the learned Counsel for the Petitioner would submit that since the validity of the notice relates to the question of jurisdiction of the

Respondent bank to proceed further to make declaration under Clause 17(a) of the Bipartite settlement, notwithstanding the fact that such a

specific plea was neither taken before the Industrial Tribunal nor raised as a ground in the writ petition, the same needs to be examined by this

Court. For this proposition, the learned Counsel would rely on a judgment of the Hon''ble Supreme Court in Kalyani Sharp India Ltd. Vs. Labour

Court No. 1, Gwalior and Another, . That was a case where the termination of service of a workman was challenged by means of an industrial

dispute. But, No. specific plea was taken before the Industrial Tribunal that the termination of service of the workman therein was not effected by

complying with Section 25-F of the Industrial Disputes Act. Such a plea was not taken before the High Court also in the writ petition. For the first

time, it was taken before the Hon''ble Supreme Court wherein an objection was raised by the management that such a plea on the basis of Section

25-F of the Industrial Disputes Act cannot be allowed to be raised before the Hon''ble Supreme Court. The Hon''ble Supreme Court negatived the

said contention and held that in matter of simple application of law, even in the absence of specific plea taken before the forums below, it can be

allowed to be raised for the first time before the higher forum. The relevant, observations of the Hon''ble Supreme Court found in paragraph 5 of

the judgment are as follows at p. 1348 of LLJ:

5. So far as the first contention raised on behalf of the Respondent is concerned, we may state that the argument emerges from the documents

which the Respondent has relied upon before the Labour Court to show about his employment and the termination of his service. No. fresh

investigation of fact is required. It is a case of simple application of law in the matter. Hence, the preliminary objection is rejected.

17. The learned Counsel would rely on yet another judgment of the Hon''ble Supreme Court in Kamlesh Babu and Others Vs. Lajpat Rai Sharma

and Others, . That was a case where the question of limitation was not raised before the first appellate Court or the High Court. For the first time,

they were raised before the Hon''ble Supreme Court. When an objection was taken for raising such a new plea, the Hon''ble Supreme Court held

that the question of limitation relates to the jurisdiction of the Court and, therefore, the same can be allowed to be raised at any stage as the

ultimate decision rendered without jurisdiction will be a nullity. In paragraphs 21, 22 and 23 are as follows:

27. It is No. doubt true, as was pointed out by this Court in the case of Balasaria Construction (P) Ltd., (2006) 5 SCC 658 and also in Name

Rama Murthy''s case, (2005) 6 SCC 614, that if the plea of limitation is a mixed question of law and fact, the same cannot be raised at the

appellate stage. We have No. problem with the said proposition of law. What we are concerned with is whether the said proposition is applicable

to the facts of this case. In this case the plea of limitation had been raised in the written statement and though No. specific issue was framed in

respect thereof, a decision was given thereupon by the learned trial Court.

22. Apart from Section 3(1) of the Limitation Act, even Order 7 Rule 11(d) of the CPC casts a mandate upon the Court to reject a plaint where

the suit appears from the statement in the plaint to be barred by any law, in this case by the law of limitation. Further, as far back as in 1943, the

Privy Council in the case of AIR 1944 24 (Privy Council) held that a point of limitation is prima facie admissible even in the Court of last resort,

although it had not been taken in the lower Courts.

23. The reasoning behind the said proposition is that certain questions relating to the jurisdiction of a Court, including limitation, goes to the very

root of the Court''s jurisdiction to entertain and decide a matter, as otherwise, the decision rendered without jurisdiction will be a nullity. However,

we are not required to elaborate on the said proposition, inasmuch as, in the instant case such a plea had been raised and decided by the trial

Court but was not reversed by the First Appellate Court or the High Court while reversing the decision of the Trial Court on the issues framed in

the suit. We, therefore, have No. hesitation in setting aside the judgment and decree of the High Court and to remand the suit to the First Appellate

Court to decide the limited question as to whether the suit was barred by limitation as found by the trial Court.

Needless to say, if the suit is found to be so barred, the appeal is to be dismissed. If the suit is not found to be time-barred, the decision of the first

appellate Court on the other issues shall not be disturbed.

18. A close reading of the above judgments would make it abundantly clear that it is always open for the Courts to examine the question touching

upon the jurisdiction of the authority who has passed the order impugned or similar questions like the question of limitation, etc., notwithstanding

the fact that a specific plea was taken raising such a question before the forums below. The basic concept is that any order passed without

jurisdiction or passed in a proceedings barred by limitation is a nullity. Simply because such a plea was not taken at the earliest stage, such an

order will not become valid. In the case on hand, instead of initiating disciplinary proceedings against the Petitioner on the ground that her alleged

absence from duty was a serious misconduct, the Respondent bank had thought of invoking its power under Bipartite settlement so as to terminate

the; service of the Petitioner on voluntary retirement. For doing so, to have initial jurisdiction to proceed further to declare that the Petitioner was

deemed to have retired from service, first of all, there has to be a satisfaction arrived at by the Respondent bank that the Petitioner had No.

intention of joining duty. Recording of such satisfaction would alone give jurisdiction to the Respondent bank to proceed further. If such a

satisfaction was arrived at by the bank, it goes without saying that the bank could not thereafter proceed further to effect voluntary retirement on

the employee. Thus, the essential requirement to give jurisdiction to the Respondent bank to proceed further as per the Bipartite settlement is, the

satisfaction on its part that the employee had No. intention of joining duty. In other words, the said question relates to the very jurisdiction of the

bank. As we have already noticed, any order passed, without jurisdiction is a nullity which cannot be cured at any point of time. Therefore, when

such a question of jurisdiction is raised by the employee, it cannot be discarded simply on the ground that the same was not raised before the

Industrial Tribunal as well as before this Court in the counter or as a ground in the other writ petition filed by the employee. As a matter of fact, this

plea was taken during the course of argument by the learned Counsel for the employee and the learned senior counsel for the bank was asked to

take note of the same and advance his argument on this question. It cannot, therefore, be said that the bank is taken by surprise by such a new

plea. Because the said question has been allowed to be raised for the first time during the course of argument, the Respondent bank is not

prejudiced and, therefore, it would not be inappropriate for this Court to examine the said question. For these reasons, I reject the preliminary

objection raised by the learned Counsel for the Respondent bank in this regard.

19. Moving on to the next question, as to whether the impugned notice declaring the Respondent deemed to have voluntarily retired from service

satisfies the requirement of the bipartite settlement, at the out set, I have to say that it does not. A close reading of the bipartite settlement would go

to show that it is not the mere absence of an employee from duty will give jurisdiction to the bank to issue notice calling upon the employee to turn

up for duty within 30 days and to further declare that the said employee is deemed to have retired from service on the expiry of the notice period.

As I have already stated, the elementary requirement is, the satisfaction on the part of the Respondent bank. Such satisfaction should have been

recorded by the bank in the notice. Apart from that, the notice should also contain the grounds upon which the bank had reasons to believe that the

Respondent had No. intention to join duty. Such reasons for belief may be by an enquiry held by the bank or from out of the other documents such

as communications from the employee. Without having any material on record and without holding any enquiry, it would not be possible for the

bank to have a reason to believe that the employee has No. intention to join duty. For any reason, without having any materials or without a valid

ground, if the bank has issued the notice as per the bipartite settlement, such a notice and the further consequential notice declaring the employee to

have voluntarily retired from service would only be void under law as the one passed without jurisdiction. The bipartite settlement further mandates

that apart from indicating the grounds for such belief, it is also required for the bank to indicate the evidences collected in support of such belief that

the employee had No. intention to join duty. In this regard I may refer to some of the judgments cited at the bar.

20. In Syndicate Bank Vs. The General Secretary, Syndicate Bank Stff Association and Another, , the Hon''ble Supreme Court was called upon

to deal with a case relating to voluntary retirement in terms of a similar bipartite settlement. In paragraph 15 of the said judgment, the Hon''ble

Supreme Court has extracted the facts of the case in brief as follows at p. 1639 of LLJ:

14. 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 the work for a period of 90 or more consecutive days. It was: thereafter that the Bank served a notice on him calling upon 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 2 of

joining duties. Dayananda did not respond to the notice at all. On the expiry of the notice period Bank passed orders that Dayananda had

voluntarily retired from the service of the Bank.

(emphasis supplied)

21. In that case, a plea was taken that the principles of natural justice were not duly complied with by the bank. Negativing the said contention, in

paragraph 18 of the judgment, the Hon''ble Supreme Court has held as follows Syndicate Bank Vs. The General Secretary, Syndicate Bank Stff

Association and Another, :

17. 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.

22. A close reading of the above reproduced portions of the judgment of the Hon''ble Supreme Court would clearly reveal, that in the said case,

the employer bank, while issuing a notice as per the Bipartite settlement calling upon the employee to report for duty within 30 days, stated in the

notice, the grounds for the bank to come to the conclusion that the employee had No. intention of joining duty. Thus, in that case, the Hon''ble

Supreme Court was convinced that the requirements of the Bipartite settlement were all satisfied.

23. In Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others, , the Hon''ble Supreme Court was called upon to deal with a similar

situation. In that case, the employee did not turn up for duty despite several letters sent to him by the bank. A show cause notice was issued

thereafter as per the Bipartite Settlement and he was declared to have retired on voluntary basis. In that case also, a question arose as to whether

the satisfaction of the bank that the employee had No. intention to join duty was based on any ground. In paragraph 3 of the order passed by the

bank, it has been stated as follows at p. 1036 of LLJ:

5...3. Consequent upon receipt of these applications from Mr. V. Sethi, the bank had No. alternative but to make confidential enquiries about the

state of his health in pursuance of which it was revealed that Mr. V. Sethi was keeping a good health and even attended to his family business. This

convinced the bank that Mr. Sethi was not at all interested in the services of the bank, which prompted it to issue an order vide No. Per/Disp/84-

448 dated May 17, 1984 in accordance with the provisions contained in memorandum of settlements dated September 8, 1983 and Mr. Sethi

was deemed to have voluntarily retired from the services of the Bank w.e.f. February 8, 1984.

24. A close look into the above extracted portion would go to show that when repeated communications were received by the Bank that the

employee was unwell, the employer bank in order to verify the correctness of the same held confidential enquiries and from out of that the bank

was satisfied that the employee was in good health and, therefore, his disinclination to attend duty was because he had No. intention to join duty. In

the said case, the Hon''ble Supreme Court was thus satisfied that the requirements of the bipartite settlement were satisfied. In those circumstances,

the Hon''ble Supreme Court held that the final order passed by the bank declaring the employee deemed to have retired from services of the bank

was valid.

25. In the instant cases, let us, now, have a look into the notices (2 Nos.) in question to see whether they satisfy the legal requirements. The first

notice issued by the Respondent bank dated March 19, 1990 reads as follows:

You joined our office on December 8, 1989 on transfer from our Komarapalayam Branch and orally informed our Chief Officer that you will be

availing joining time from December 9, 1989. After availing the-joining time of six days, you have not reported for duty on December 15, 1989.

You have neither reported for duty nor sent any information and continued to be absent. We have on December 30, 1989 sent a Regd. Letter to

you informing you about your unauthorised absence and advised you to report for duty immediately on receipt of our letter dated December 30,

1989.

On January 30, 1990, we have received a copy of your undated letter signed by you to our Central Office, wherein you have pleaded for leave, if

at credit or leave without pay until you recover from ''severe vertebral pain''. You have not enclosed any Medical Certificate in support of your

purported sufferings.

On January 3, 1990, you have been advised to send your leave application in the proper format together with the medical certificate for our

consideration. As we have not received any reply, once again, we have on February 2, 1990 advised you to either submit within three days the

leave application in the prescribed format with Medical Certificate or report for duty immediately on receipt of our letter dated February 2, 1990.

In our letter dated February 2, 1990, we have also informed you that your absence from December 15, 1989 will have to be treated as

unauthorised absence and you will not be paid any salary during the said period and appropriate disciplinary action will be taken against you as per

rules.

Our said letter has been returned to us as undelivered for the reason ''Door locked, not found''.

You are hereby given an opportunity, giving 30 days time to report for duty, failing which it will be construed that you have No. interest in the Bank

job and you have left the job on your own volition and you were deemed to have voluntarily retired from the Bank''s service/voluntarily ceased of

employment on expiry of the above period of 30 days, in terms of Clause 17 of V. Bipartite Settlement dated April 10, 1989.

26. Admittedly, the said notice was not served on the Petitioner. Therefore, there was No. occasion for the Petitioner to comply with the said

notice. Thereafter, the Respondent bank passed the final order dated May 2, 1990 which reads as follows:

Please refer the Notice under reference No. ZO:PRNL:CL:1216:90 dated March 19, 1990 sent to you by RPAD and under certificate of posting

regarding voluntary cession of employment in terms of Clause 17 of the 5th Bi-partite Settlement dated April 10, 1989, due to your continued

unauthorised absence of more than 90 days without proper application.

Even after the above notice, you neither reported for duty within the prescribed 30 days nor submitted any explanation/reply for your unauthorised

absence to the satisfaction of the Management that you have No. intention of not joining duties.

It is, as such, construed that you have No. interest in the Bank Job and you have left the job on your own volition and you were deemed to have

voluntarily retired from the Bank''s service/voluntarily ceased off employment with effect from April 17, 1990 i.e., from the date of expiry of 30

days notice, in terms of Clause 17 of the 5th Bi-partite Settlement dated April 10, 1989.

27. A deep perusal of these two proceedings of the Respondent bank would clearly go to show that there was No. satisfaction at all arrived at by

the bank that the Petitioner had No. intention to join duty. The notice dated March 19, 1990 does not contain any such averment at all. It simply

states that in the event of failure of the Petitioner to join duty within 30 days, it will be construed that the Petitioner had No. interest in the bank job.

This, in my considered opinion, does not satisfy the requirements of the bipartite settlement. As we have already noticed in the above two

judgments of the Hon''ble Supreme Court in one case, such a satisfaction was arrived at from out of the records and in the other case, such

satisfaction was arrived at by holding a confidential enquiry. Here, in the instant case, there were No. materials at all on the file of the Respondent

bank to arrive at such a satisfaction that the Petitioner had No. intention of joining duty, nor was there any confidential enquiry held to arrive at

such a satisfaction. Apart from that, the notice also does not contain the details of the grounds as well as the materials upon which such conclusion

was arrived at by the Respondent bank. Thus, it is crystal clear that the notice dated March 19, 1990 does not satisfy the requirements of the

bipartite settlement and, therefore, the said notice as well as the final order dated May 2, 1990 are wholly without jurisdiction and thus, the order

of the Respondent bank imposing voluntary retirement on the Petitioner is a nullity.

28. Now, coming to the question of service of notice on the Petitioner, it is not in dispute that the Petitioner had given her address at Coimbatore

when she lastly reported for duty. All these notices were sent to the Petitioner only to the address at Coimbatore. But the crucial notices were not

served on the Petitioner because she was not found in the address at Coimbatore as evidenced by the endorsements of the postal authorities. In

this regard, the Petitioner would contend that her change of address was communicated to the bank in her letter dated February 7, 1990. As we

have already noticed, it is the contention of the Respondent bank that such communication dated February 7, 1990 was never received by the

Respondent bank. The Petitioner has produced a certificate of posting in order to prove that the said letter dated February 7, 1990 was sent to the

Respondent bank. But, the Industrial Tribunal has declined to accept the said contention of the Petitioner that such a letter was sent on February 7,

1990. The Industrial Tribunal has found that such letter had been now introduced for the purpose of the case. In my considered opinion, the

certificate of posting which has been produced in evidence before the Industrial Tribunal would only go to prove that such a letter dated February

7, 1990 was posted by the Petitioner but that will neither go to prove that the said letter was delivered to the Respondent bank, nor would give

rise to a presumption that it was delivered to the Respondent bank. Therefore, I am also of the; opinion, as held by the Industrial Tribunal, that the

letter said to have been sent by the Petitioner to the Respondent bank on February 7, 1990 is not true. All the communications were sent by the

Respondent bank only to the last known address of the Petitioner at Coimbatore. Thus, in the matter of sending notices to the last known address,

the Respondent bank has complied with the requirements of the bipartite settlement. In this regard, I do not find anything perverse in the finding of

the Industrial Tribunal.

29. But as I have already held, the finding of the Industrial Tribunal that the Petitioner is not entitled for reinstatement in services of the bank cannot

be sustained. We cannot lose sight of the fact that it is not a case where the Petitioner has been terminated from services of the Bank in accordance

with the procedure established under law by initiating disciplinary proceedings, followed by enquiry after affording sufficient opportunity to the

Petitioner and by following the principles of natural justice. It is also not a case where the Petitioner has been retrenched by following the

mandatory procedures contained in Section 25-F of the Industrial Disputes Act. It is a case where by means of a short cut method created by the

Bipartite settlement, the Petitioner is sought to be sent out of employment. When such a short cut method is adopted by the Respondent bank by

using its power under the Bipartite settlement, the same should be done in accordance with strict compliance of the requirements of the Bipartite

settlement. The Bipartite settlement cannot be lightly interpreted as it is sought to be made by the learned Counsel for the Respondent bank. It

requires very strict construction and very strict compliance of requirements. Therefore, I hold that the impugned order of the Respondent bank

imposing voluntary retirement on the Petitioner is not valid and the same is, therefore, liable to be interfered with.

30. While holding that the Petitioner is entitled for reinstatement, the next question which crops up for consideration is as to whether the Petitioner

is entitled for back wages. In my considered opinion, the answer is an emphatic No. Going by the conduct of the Petitioner in not turning up for

duty for several months without even having the Courtesy of sending leave application in appropriate format and ensuring that the said leave letter

reaches the bank in time and having regard to the fact that she did not discharge any useful work for the Respondent bank in all these years, I am

of the view that the Petitioner is not entitled for back wages. For the reasons which I have stated above, I am of the view that it would not be in the

interest of justice to direct the Respondent bank to pay back wages to the Petitioner.

31. In the result, the writ petition No. 17493/1998 is allowed; the impugned order dated April 24, 1997 made in I.D. No. 105/1992 by the

Presiding Officer, Industrial Tribunal, Madras thereby confirming the final order of the bank dated May 2, 1990 effecting voluntary retirement on

the Petitioner is set aside and the Respondent bank is directed to reinstate the Petitioner with continuity of service, but without back wages. W.P.

No. 16490/1997 is dismissed. No. costs.