
(1999) 3 LLJ 718 : (1996) 2 OLR 326

Orissa High Court

Case No: O.J.C. No. 585 of 1994

Management, State
Bank of India

APPELLANT

Vs

Bipin Bihari Patnaik and
Another

RESPONDENT

Date of Decision: May 14, 1996

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Evidence Act, 1872 - Section 114
- Industrial Disputes Act, 1947 - Section 10(1), 10(2A)

Citation: (1999) 3 LLJ 718 : (1996) 2 OLR 326

Hon'ble Judges: A. Pasayat, J; A. Deb, J

Bench: Division Bench

Advocate: Bibudhendra Misra and K.K. Jena, for the Appellant; L. Pangari and S. Das, for the Respondent

Final Decision: Partly Allowed

Judgement

A. Pasayat, J.

The Management of State Bank of India (hereinafter referred to as the "employer") calls in question legality of the award made by the Industrial Tribunal, Orissa (in short, the Tribunal") adjudicating a reference made by Government of India in the Ministry of Labour in exercise of power conferred under Clause (d) of Sub-section (1) and Sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947 (in short, the "Act"), Reference related to justification of refusal of employment to Bipin Bihari Patnaik (hereinafter referred to as the workman), opp. party No. 1 in this writ application.

2. Factual position, as presented by the respective parties before the Tribunal and reiterated before this Court, are as follows :

The workman's case sans unnecessary details is that he was working as a Clerk in the State Bank of India, Phulbani Branch in the year, 1985. He availed leave for three days from April 11, 1985 to April 13, 1985 and proceeded to his native place. Since he suffered from peptic ulcer and was under the treatment of Bank's authorised Doctor at Puri, request was made for extension of leave. After being cured, he came to branch and submitted his joining report along with medical certificate. The Branch Manager did not accept the joining report and also did not allow him to work. Feeling helpless he moved from pillar to post, but got no relief. He met the Regional Manager to put forth his grievance but that also did not yield any result. Left with no alternative he complained to the Chief Regional Manager. It also met with the same fate. Even though he was willing to resume his duty after availing leave, he was not permitted to do so. Such action amounts to refusal of employment, and termination of his service.

Stand of the management was that the workman-clerk left for his native place after leave was granted for three days. On expiry of leave, he neither returned to his duty nor did he extend his leave. No reason was indicated for such unauthorised absence. By telegram and registered letters he was informed to resume duty but he did not do so. On the other hand, he sent a telegram to the Branch Manager intimating that he would join his duty on June 30, 1985. Even on that day, he did not turn up. Only on July 27, 1985 he came to the Branch and wanted to join his duty. The Branch Manager enquired about reasons for his absence. He gave out that being ill during these days he could not come to join duty. The Branch Manager advised him to furnish medical certificate in support of his plea of illness, but he left the Bank without furnishing any certificate and did not turn up thereafter. As the absence of the workman from duty was more than ninety days, it was presumed that he voluntarily left his service in terms of Clause XVI of the Bi-partite settlement dated September 17, 1984 governing the service conditions of the Bank employees. In that view of the matter, there is no scope to say that the management terminated the services of the workman without following due process of law.

3. Reference was made to the Tribunal on the basis of grievance of the workman to adjudicate the following dispute.

"Whether the action of the management of State Bank of India, Phulbani Branch, in refusing employment to Sri B.B. Patnaik with effect from July 27, 1985 is justified? If not, to what relief the workman is entitled to?"

On appraisal of evidence it was observed by the Tribunal that absence of the workman from duty was beyond his control. Certificate of the doctor indicated that he was suffering from various ailments and was getting treatment from one of the Bank's authorised doctors. Certificates of posting produced by the workman indicated that letters were sent to the Branch Manager intimating about the ailments. With reference to Clause XVI of the Bi-partite settlement, it was observed that the said clause has operation only if workman has no intention to join his duty since because he remained absent for a period of ninety days or more or that he has taken up any other employment in India. Case at hand was

not of that nature. On the other hand, the management did not resort to the aforesaid clause before the workman returned to duty. In essence, it was held that refusal amounted to termination and it was directed that the workman should be reinstated in service with full backwages. The period of absence of the workman till July 26, 1985 was to be treated as leave and if there was no leave to his credit, the same was to be treated as leave without pay. From July 27, 1985 when he came to the branch to join duty till reinstatement he was to be paid full backwages within three months.

4. In support of the writ application it is submitted that conclusions of the Tribunal are presumptuous and based on conjectures. Clause XVI has not been interpreted in its proper perspective. Workman's readiness to join and serve was not borne out from the materials on record. In any event, the Tribunal lost sight of the fact that grievance regarding refusal of employment was made long after the alleged date of termination i.e. sometimes in the year, 1990. Therefore, direction for payment of full backwages is uncalled for. Learned counsel for the workman submitted that as the Tribunal has on appreciation of evidence come to the right conclusion while exercising jurisdiction under Articles 226 and 227 of the Constitution of India, scope for appraisal of evidence is very limited.

5. Fate of the case depends on the scope and ambit of Clause XVI of the Bi-partite settlement of service condition of the Bank employees arrived at on September 17, 1984. The same so far as relevant reads as follows:

"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 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 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 the said notice. In the event of the employee's 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 Rule 3 of service."

The essence of clause is absence of intention of the workman to join duty. It is the duty of the employer to serve a notice mentioning the reasons for its satisfaction that the workman has no present intention to join duty after having remained absent for 90 days

or more consecutive days. After receipt of notice, two options are open to the workman either to report for duty within thirty days or to submit satisfactory explanation that he has not taken any avocation elsewhere and that he has no intention of not joining his duty. If he fails to comply with either of the options, he shall be deemed to have voluntarily abandoned service. In the event he submits satisfactory explanation, it is obligatory for the management to permit to join his duty within thirty days of expiry of notice period. The Bank is however, left with the discretion to take disciplinary action against the concerned employee in accordance with law even after he joins duty. The Bank in the instant case does not appear to have resorted to the aforesaid clause before the workman reported for duty on July 27, 1985. The only question therefore, is whether the workman had expressed his intention to join duties. It has been contended by the learned counsel for the Bank that the Tribunal has misconstrued a certificate of posting to be proof of service of letter, in respect of which it was issued. Learned counsel for the workman submitted that Section 114 of Indian Evidence Act, 1872 (in short, "Evidence Act") comes into operation, and though the Tribunal did not refer to any provision, it seems to have taken assistance of Evidence Act.

6. Without entering into controversy whether certificate of posting constitutes evidence of service, it is to be seen whether there was any, other material to buttress stand of the workman. Telegram dated June 28, 1985 (Ext. A) clearly shows that the workman had intention to join. If workman had no intention to join there was no necessity to send the telegram sent on June 28, 1985. It indicated an intention to join duties. "Intention" is the determination to act in a certain way. "Intent" by its etymology seems to have metaphorical allusion to archery, and implies "aim" and thus connotes not casual or merely possible result-foreseen perhaps as a not improbable incident, but not desired, but rather connotes the one object for which the effort is made and thus has reference to what has been called the dominant motive without which the action would not have been taken. Intention is the volition of mind immediately preceding the act while object is the end to which effect is directed, the thing aimed at end, that which one endeavors to attain and carry on. Intention is the result of working of the brain and can be gathered from judging the act and the circumstances under which it was done. Said telegram to a considerable extent furthers workman's stand that he had no intention of abandoning his service and/or not to join duty. Conclusions of the Tribunal are essentially factual. They cannot be termed to be baseless of the materials on record. Whether workman had intention to join is a question of fact. A finding of fact is not to be interfered with while exercising jurisdiction under Articles 226 and 227 of the Constitution, unless (a) it is based on no evidence or material, or (b) it is perverse, being such as no reasonable person could have arrived at, even if the evidence or material was taken at its face value, or (c) it is based and built on inadmissible evidence which evidence if excluded from vision would negate the case put forth by the party leading it, or substantially discredit or impair it, or (d) some vital piece which would tilt the balance in favour of the affected party has been overlooked, disregarded or wrongly discarded. On overall consideration we agree with the conclusion that the workman's intention was to join duty.

7. Further challenge is to the direction relating to back wages. Undisputedly, dispute was raised after substantial length of time. Tribunal while dealing with question of backwages, can take note of conduct of the workman and unless satisfactory explanation is offered for delayed approach for relief, in appropriate cases part or full backwages can be denied. Grievance appears to have been raised after a considerable length of time. Taking those aspects into consideration, we direct payment of backwages from January 1, 1990, and not from July 27, 1985 as directed by Tribunal. Direction of reinstatement is maintained till January 1, 1990. The workman shall be deemed to have been continued in duty till December 31, 1989. He shall be treated as on leave and if there is no leave thereafter, the period is to be treated as leave without pay.

The writ application is allowed to the extent indicated above. No costs.

A. Deb, J.

8. I agree.