

L.Nagar Vs. Syndicate Bank, Rep.by the General Manag

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Court : Andhra Pradesh

Decided On : Dec-18-2013

Judge : Hon'Ble Sri Justice Ashutosh Mohuntaand Hon'Ble Sri Justice

Appellant : L.Nagar

Respondent : Syndicate Bank, Rep.by the General Manag

Advocate for Def. : Sri. G.S.K.V. Ramana Murthy Counsel

Judgement :

HON'BLE SRI JUSTICE ASHUTOSH MOHUNTAAND HON'BLE SRI JUSTICE M.SATYANARAYANA1812-2013 L.Nagaraju.. Appellant Syndicate Bank, rep.by the General Manager, Syndicate Bank Zonal Office,Pioneer House, Somajiguda, Hyderabad and others.... Respondents Counsel for Appellant: Sri G.S.K.V. Ramana Murthy Counsel for Respondents: Sri Deepak Bhattacharjee, SC HEAD NOTE: ?.Cases referred AIR 2003 SC858AIR 2006 SC2316AIR 2001 SC1748AIR 2000 SC21981978 (2) SLR425AIR 1984 SC541AIR 2003 SC534AIR 1997 SC1390AIR 1999 SC14161999 (2) ALD1541996 (2) ALT383HON'BLE SRI JUSTICE ASHUTOSH MOHUNTA AND HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY C.C.C.A.No.89 of 2003

JUDGMENT

: (per Hon'ble Sri Justice M. Satyanarayana Murthy) The unsuccessful plaintiff in O.S.No.576 of 2000 on the file of the XII Additional Chief Judge (Fast Track

Court), City Civil Court, Hyderabad, preferred this appeal against the impugned decree and judgment dated 11.11.2002.

2. The appellant was the plaintiff and the respondents were the defendants in the suit and hereinafter referred to as ".the appellant". and ".the respondents"., for the sake of convenience.

3. The appellant filed suit against the respondents for the following reliefs:- ".(a) for recovery of a sum of Rs.14,00,000/- with interest @ 12% per annum from the date of the suit till the date of realization by way of damages on account of humiliation, harassment and insult by D4, who acted as Manager of D3 and inaction, illegal and unconstitutional decision of D1 and D2; (b) for recovery of Rs.23,000/- with interest @ 12% per annum from the date of suit till the date of realisation towards salary arrears on account of Pay Revision as Award Staff from 1.11.1997 to 2.5.1999 and as Officer from 3.5.1999 to 27.4.2000; (c) for recovery of Rs.16,720/- with interest @ 12% per annum from the date of the suit till the date of realisation being salary for 31 days of Privilege Leave after deducting the amount already paid to his Privilege Leave Account; (d) for recovery of a sum of Rs.40,451/- with interest @ 12% per annum from the date of the suit till the date of realisation as salary for 75 days from 1.11.1999 to 15.11.1999 and from 25.11.1999 to 27.4.2000 by treating it as Sick Leave; (e) to direct D1 and D3 for re-fixing his pension taking into account the correct figures of salary, pursuant to the revision of pay scales from 1.11.1997 with interest thereon @ 12% per annum from the date of the suit till the date of realisation; (f) for recovery of Rs.28,990/- with interest @ 12% per annum from the date of the suit till the date of realisation being the differential amount of gratuity due and payable after recalculating the gratuity amount taking into account the correct figures of salary after revision of pay scales; and (g) for costs of the suit.".

4. The facts, in brief, are that the appellant joined as Clerk in Syndicate Bank on 2.11.1978 and worked at different places in the same cadre. Later he was promoted as Officer on 3.5.1999 and posted in the 3rd respondent Branch at Banswada, Nizamabad District. During the period as Probationer in the 3rd respondent Branch, he was subjected to physical and mental harassment by the

4th respondent, who is the Manager of the 3rd respondent Branch, which resulted in deterioration of health and faced difficulties in discharging his duties under the 4th respondent. Thus, the appellant was put to different kinds of harassment by the 4th respondent.

5. The specific instances of harassment as pleaded in the plaint are as follows: (a) The 4th respondent, being the Head of the 3rd respondent Branch, is having a supervisory control over the appellant, while exercising supervisory powers, started humiliating and ill-treating the appellant, particularly expressing official bias, vindictive temperament quite often trying to insult the appellant in the presence of customers for no reason. The ill-treatment reached to a peak stage and whenever the appellant gave advance intimation for availing casual leave in connection with unavoidable social function, the 4th respondent used to entrust unavoidable official assignment for that day compelling him to remain on duty, thereby the appellant was prevented to attend all those social functions. The appellant was prevented to attend the marriage of his niece on 27.10.1999 and funeral of his maternal uncle on 13.10.1999; (b) The 4th respondent directed the appellant to collect an amount of Rs.100/- from the neighbouring Branches without official acknowledgement at the time of handing over the stationery relating to Public Issue of equity shares brought from Regional Office for distribution around Banswada, like Gandivet, Durki, Menur, Bichkonda etc. When it was objected by the appellant, the 4th respondent personally collected the amount unauthorisedly from different Branches, on account of refusal by the appellant, the 4th respondent intensified the mental cruelty by humiliating and harassing him continuously; and (c) When the physical and mental health condition of the appellant was badly affected, he underwent treatment and applied for leave and reported to duty on 16.11.1999, but the 4th respondent continued teasing, personal insults, humiliation and harassment and thereby the appellant used to commit mistakes; (d) The appellant finding no other alternative, applied for leave from 2.11.1999 to 29.11.1999 on 24.11.1999 handing over the set of keys and left to Hyderabad for treatment, on 26.11.1999 the appellant was advised to consult a Neuro-physician and Orthopaedic Surgeon also and he was treated as an out- patient in King Koti Hospital at Hyderabad and applied for leave by sending a telegram on 29.11.1999. Later he underwent several tests and ultimately found that his optic nerve was

slightly damaged and had a problem of ".PVIDL4/5"., which is the cause of backache and immediately the appellant addressed a letter dated 4.12.1999 applying leave, duly enclosing the medical record, but the 4th respondent intimated to the appellant that the leave for the period from 1.11.1999 to 15.11.1999 and 25.11.1999 to 19.12.1999 has been treated as unauthorised absence with a further direction to obtain permission from the Regional Office to join duties before reporting duty at Banswada Branch. Thus, the appellant was put to harassment without even sanctioning leave. Moreover, the appellant again addressed a letter dated 20.12.1999, duly enclosing the medical certificate for extension of leave. The appellant addressed a letter dated 24.12.1999 for reconsideration of the leave period, but it was thrown out by the authorities concerned. Thereupon, he submitted a letter dated 4.1.2000 for further leave on medical grounds, duly enclosing medical record and the appellant received a telegram on 17.1.2000 from the 3rd respondent directing him to undergo health check up with the Bank's Panel Doctor, Dr. Kasturi Narasimhan, near Picket Branch, Hyderabad. Accordingly, he attended the medical check up on 19.1.2000 and intimated the same to the 3rd respondent by letter dated 20.1.2000, duly enclosing the certificate issued by the Panel Doctor. He submitted a detailed representation dated 5.2.2000 to the 3rd respondent, but leave was not granted. Thus, the appellant was harassed without any reasonable cause by the 4th respondent.

6. In view of the acts of 4th respondent, having no other alternative, the appellant addressed a letter dated 16.2.2000 with a request to transfer from Banswada Branch to a place where medical facilities are available and if the request is not considered, the same is to be treated as voluntary retirement, by enclosing a filled-in proforma for voluntary retirement. Thereupon, the 1st respondent addressed a letter permitting the appellant to retire voluntarily and directed the 3rd respondent to relieve him from duties in absentia after office hours on 27.4.2000 and the same was communicated to him on 27.4.2000. The leave period earlier mentioned was still treated as unauthorised absence. Thus, the 4th respondent harassed the appellant in different ways, not even sanctioning leave on medical grounds and compelled him to apply for voluntary retirement from service.

7. It is further contended that failure to consider the request for sanctioning sick leave and other kinds of leave is against the rules.
8. The 4th respondent intentionally credited a paltry sum of Rs.7,392-26 ps. though the appellant is entitled to Rs.30,000/- towards arrears due as Award Staff from 1.11.1997 to 2.5.1999 and as Officer from 3.5.1999 till the date of relieving. Thus, there is a deficit credit of Rs.23,000/- and thereby the respondents are liable to pay interest @ 12% per annum on the said amount. This is another kind of harassment.
9. The 4th respondent did not grant Privilege Leave of 80 days and that the appellant is also entitled for a further leave of 30 days by the date of his annual increment, but the 4th respondent did not pay the amount of Rs.16,720/- for the said period towards Privilege Leave and indirectly harassed the appellant. Hence, respondent Nos.1 to 4 are liable to pay Rs.16,720/- with interest @ 12% per annum. The appellant also claimed his salary of Rs.40,451-70 ps, being the salary for 75 days, by adjusting it to sick leave and 6 days of unavailed casual leaves. The same is liable to be repaid with interest @ 12% per annum.
10. It is also contended that the pension of the appellant was fixed as Rs.2,893/- on pre-revised scales. After revision of pay scales, the appellant is entitled to pension at Rs.2,990/-, therefore, sought for re-fixation of pension and pay arrears of pension together with interest at 12% per annum. The appellant also claimed for re-fixation of his gratuity and other reliefs complaining harassment against the 4th respondent. Hence, the suit for the reliefs mentioned supra.
11. Respondent No.1 (D1) filed a written statement admitting working of the appellant in various cadres and applying for voluntary retirement and permitting him to retire under voluntary retirement scheme while working at Banswada Branch. According to the 1st respondent, the appellant joined the 1st respondent's Bank as a Clerk on 2.11.1978, posted to Officer Cadre in JMG Scale- I on 3.5.1999 and on promotion he was posted to Banswada Branch as Assistant Manager and reported to duty at the said Branch as Assistant Manager on 3.5.1999. Banswada is a medium branch, which is classified as semi-urban area, headed by Branch Manager in MMG Scale-II. It was further pleaded that the

appellant obtained Privilege Leave from 24.7.1999 to 31.7.1999 on account of his father's sickness and from 20.8.1999 to 6.9.1999 on account of his mother's sickness. His absence from 1.11.1999 to 15.11.1999 and from 25.11.1999 onwards till he relieved from the service of the Bank under voluntary retirement scheme was treated as unauthorised absence by the leave sanctioning authority i.e., the 4th respondent, as the appellant did not follow the leave rules. The 4th respondent, who is the leave sanctioning authority of the employees of the 3rd respondent Branch, treated the absence of the appellant from 1.11.1999 to 15.11.1999 and from 25.11.1999 onwards as unauthorised absence and the 4th defendant also admitted issue of telegram dated 17.1.2000 directing the appellant to undergo medical check up under Panel Doctor, Dr. Kasturi Narasimhan at Secunderabad. Immediately, the appellant applied for voluntary retirement under the scheme, which was in force by then, on health and personal grounds and accordingly, he was permitted to retire voluntarily from service and paid the retirement benefits payable to him under the scheme, including the eligible arrears, due to wage revision in the clerical cadre as well as in the officer cadre and disbursed the amount as per the guidelines in force. The period from 1.11.1999 to 15.11.1999 and from 25.11.1999 till he retired from service voluntarily was treated as unauthorised absence, was ratified by the higher authorities. Therefore, failure to sanction leave on any ground does not amount to harassment.

12. The 1st respondent further contended that all arrears were paid to the appellant fixing the benefits as per the pay revision norms. It was also stated that the services of the employees in the Bank are governed by Syndicate Bank Officers Services Regulations, 1979 and Syndicate Bank Officer Employees (Conduct) Regulations, 1976. The principles of natural justice are strictly adhered to in both the aforesaid regulations and there was no violation of the principles of natural justice and the allegation is without any merit. The 1st defendant also contended that the Branch Manager treated the leave period referred in the earlier paragraphs as unauthorised absence in terms of the rules and regulations in force. Therefore, treating the period of leave applied as unauthorised absence cannot be termed as harassment.

13. It is further contended that the appellant himself opted to retire from service as per the VRS Scheme under Pension Regulations of the Bank and he received the benefits without any protest, thus the appellant now cannot question the 4th respondent attributing harassment and mala fides. The claim of Rs.23,000/- towards salary arrears and Rs.16,720/- towards privilege leave is not within the fore-corners of law and the appellant's claim for privilege leave for 75 days treating the period of absence referred to above as unauthorised, to which he is not entitled to claim. The 1st defendant further pleaded that the pension calculation as per the entitlement is in accordance with law and the appellant is not entitled to claim anything more than the pension already fixed and there is no contract for payment of interest between the appellant and the respondents and finally prayed for dismissal of the suit.

14. Respondent Nos.2 to 4 filed a Memo adopting the written statement of the 1st respondent.

15. Basing on the above pleadings, the trial Court framed the following issues: (1) Whether the plaintiff is entitled to have a decree for Rs.14,00,000/- with interest @ 12% per annum towards damages as prayed for (2) Whether the plaintiff is entitled to have a decree for Rs.23,000/- along with interest @ 12% per annum as salary arrears on account of Pay Revision for the period from 1.11.1997 to 2.5.1999 and from 3.5.1999 to 27.4.2000 as prayed for (3) Whether the plaintiff is entitled to have a decree for Rs.16,720/- with interest @ 12% per annum towards privilege leave account as prayed for (4) Whether the plaintiff is entitled to have a decree for Rs.40,451/- with interest @ 12% per annum towards salary for the period from 1.11.1999 to 15.11.1999 and from 25.11.1999 to 27.4.2000 as prayed for (5) Whether the plaintiff is entitled for a direction to D1 to D3 to re-fix the pension pursuant to the revision of pay scales as prayed for (6) Whether the plaintiff is entitled to have a decree for Rs.28,990/- with interest @ 12% per annum towards differential amount of gratuity as prayed for (7) To what relief 16. During the course of trial, on behalf of the appellant, the appellant/plaintiff himself was examined as PW.1 and marked Exs.A.1 to A.71. On behalf of the respondents, one Munukoti Ramu, Senior Manager of the 1st respondent Bank, was examined as DW.1 and the 4th respondent was examined as DW.2 and marked Exs.B.1 to

B.10 and Ex.X.1.

17. Upon hearing the arguments of both the counsel and considering oral and documentary evidence on record, the trial Court dismissed the suit holding that the appellant failed to establish the alleged harassment attributed to any of the respondents. Aggrieved by the impugned decree and judgment dated 11.11.2002 of the trial Court, the appellant/plaintiff preferred the present appeal on various grounds.

18. The main contentions raised on behalf of the appellant are as follows: (a) The act of respondent Nos.1 to 4 is illegal, but the trial Court did not consider the conduct as to how the appellant was harassed by 4th respondent, (b) The trial Court did not consider the oral and documentary evidence in proper perspective, non-examination of the doctor, who issued prescriptions, is not a ground to deny the reliefs on the ground of harassment, (c) The trial Court did not consider the primary request of the appellant for transfer, but basing on the request for voluntary retirement from service, erroneously concluded that the appellant was not harassed, (d) Failure to file written statement by respondent Nos.2 to 4 and adopting the written statement of respondent No.1, who took the entire responsibility, is not sufficient to deny the allegations and it amounts to admission under Section 58 of the Indian Evidence Act, 1872 and the appellant need not prove the alleged harassment, but the trial Court miserably failed to appreciate the contentions, (e) The application dated 16.2.2000 for voluntary retirement marked as Ex.A.32, equivalent to Ex.B.1, was not unconditional, but the primary request is for transfer from Banswada to any other place where medical facilities are available or, in case his request is not acceded to, the appellant sought for voluntary retirement as per VRS Scheme existing by then, (f) The trial Court did not interpret the contents of Ex.B.1, equivalent to Ex.A.32, in proper perspective, (g) The absence of the appellant from 1.11.1999 to 15.11.1999 and from 25.11.1999 to 27.4.2000 is justifiable and it is supported by voluminous medical evidence, but the respondents treated the leave period as unauthorised absence without any basis and the trial Court failed to appreciate the said contention, (h) The trial Court also failed to consider that non-payment of arrears amount under various heads claimed in the plaint is a grave error apparent on the face of the

record; and Finally prayed to allow the appeal by setting aside the impugned decree and judgment of the trial Court and decree the suit in favour of the appellant/plaintiff for the reliefs claimed in the plaint.

19. During the course of arguments, learned counsel for the appellant vehemently contended that the principles of natural justice were not followed while permitting the appellant to retire voluntarily from service and no notice was given to him. Therefore, the act of the respondents in retiring the appellant voluntarily is in violation of the principles of natural justice. He would further contend that the harassment attributed to the 4th respondent resulted in deterioration of the health of the appellant and thereby he developed several physical and mental problems, like backache, damage to optic nerve, depression etc. Added to that, failure to sanction leave to the appellant without any reasonable cause amounts to harassment and humiliation at the work place, therefore, the harassment or humiliation of the appellant by the 4th respondent compelled him to apply for voluntary retirement and not otherwise, but the trial Court did not consider all these aspects in proper perspective. Finally, the learned counsel would contend that the voluminous documentary evidence available on record clinches the issue as to how the respondents harassed the appellant in different ways. That apart, failure to pay the entitled amount on retirement also amounts to harassment, but the trial Court did not appreciate these contentions properly with reference to the material on record and the legal position and thus committed an error. The learned counsel finally prayed to allow the appeal by setting aside the impugned decree and judgment of the trial Court and decree the suit in favour of the appellant/plaintiff.

20. Per contra, Sri Deepak Bhattacharjee, learned Standing Counsel for the respondents/defendants argued totally in support of the findings of the trial Court and prayed to dismiss the appeal, confirming the impugned decree and judgment of the trial Court.

21. This Court, being the Court of first appeal, has to re-appraise the entire oral and documentary evidence with reference to the pleadings and decide the appeal afresh notwithstanding the findings recorded by the trial Court. Therefore, we would like to re-appraise the entire evidence to decide the real controversy,

uninfluenced by various findings recorded by the trial Court.

22. Considering rival contentions and perusing the material available on record, the points that arise for determination are as follows: (1) Whether the 4th respondent, being the Manager of the 3rd respondent Branch, subjected the appellant to harassment or humiliation, which resulted in damage both physical and mental health, thereby compelled him to retire voluntarily from service. If so, the appellant/plaintiff is entitled to damages of Rs.14,00,000/- together with interest @ 12% per annum (2) Whether the appellant is entitled to a decree for Rs.23,000/- along with interest @ 12% per annum as salary arrears on account of Pay Revision for the period from 1.11.1997 to 2.5.1999 and from 3.5.1999 to 27.4.2000 (3) Whether the appellant is entitled to have a decree for Rs.16,720/- with interest @ 12% per annum towards privilege leave account (4) Whether the appellant is entitled to have a decree for Rs.40,451/- with interest @ 12% per annum towards salary for the period from 1.11.1999 to 15.11.1999 and from 25.11.1999 to 27.4.2000 (5) Whether the appellant is entitled for a direction to respondent Nos.1 to 4 to refix the pension pursuant to the revision of pay scales (6) Whether the appellant is entitled to have a decree for Rs.28,990/- with interest @ 12% per annum towards differential amount of gratuity In re. Point No.1:

23. The appellant herein who is the plaintiff in the sit filed suit claiming damages of Rs.14,00,000/- together with interest @ 12% p.a. The claim of the appellant-plaintiff is mainly based on the contention that the 4th respondent being the manager of the 3rd respondent branch subjected the appellant to harassment which resulted in damage of both physical and mental health, thereby forced him to retire voluntarily from the service. Thus, it is clear from the contention of the appellant-plaintiff that the damages claimed by the appellant- plaintiff is due to harassment of appellant-plaintiff at the work place i.e. the 3rd respondent branch by the 4th respondent. Before advertng to the facts and evidence on record, it is pertinent to find out the definition of ".Harassment at work place". by various authors to conclude that the allegations made by the appellant-plaintiff in the plaint against the 4th respondent would amount to harassment at work place. As per Northern Health and Social Care Trust, Rosemary Mc. Ferran, Assistant Director of employment relations, the definition of work place harassment is as follows: ".A)

Harassment at work in any form is unacceptable behaviour and will not be permitted or condoned. Sexual, sectarian and racial harassment, harassing a disabled person on account of disability or harassing someone on grounds of sexual orientation or age is unlawful under the sex discrimination, fair employment, race relations, disability, sexual orientation and age legislation. Harassment may also be a civil offence, a criminal offence or may contravene health and safety legislation, and will be treated by the office as misconduct which may include gross misconduct warranting dismissal. Harassment detracts from a productive working environment and can affect the health, confidence, morale and performance of those affected by it, including anyone who witnesses or knows about the unwanted behaviour. All employees must comply with this policy which has been agreed with the recognised Trade Unions/staff organisations. The policy should be read in conjunction with the appropriate professional codes of practice. Harassment is an unwanted conduct, deliberate or otherwise, related to the equality grounds previously outlined, which has the purpose or effect of violating the dignity of a person, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for employees. This can include unwelcome physical, verbal or non-verbal conduct. Such behaviour is unacceptable where: (i) It is an unwanted, unreasonable and offensive to the recipient. (ii) It is used as the basis for an employment decision. (iii) It creates a hostile working environment. Harassment implies one person imposing behaviour that another finds threatening or humiliating and is unwanted, unwelcome and unpleasant. Harassment can represent a single, serious incident or persistent abuse. The effect of harassment is experienced at both an individual and organisational level. Harassment denies an individual respect and can affect the health, confidence and morale of any individual who experiences, witnesses or is aware of it. Many forms of behaviour can constitute harassment; some examples are listed below, although this list is not exhaustive. Physical conduct ranging from touching to serious assault. Verbal and written harassment through jokes, racist, sexist or sectarian remarks, homophobic comments, comments about a person's disability, offensive language, gossip and slander, sectarian songs, mobile telephone ring tones, threats, letters, e-mails. Visual displays of posters, computer screen savers, downloaded images, graffiti, obscene gestures, flags, bunting or emblems, or any other offensive

material. Isolation or non-cooperation at work, exclusion from social activities. Coercion, including pressure for sexual favours, pressure to participate in political or religious groups. Intrusion by pestering, spying, following, etc."

23. The Australian Government, Department of Climate Change, defined the word ".Harassment at work place". under the Head ".What is Bullying and Harassment - Prevention and Management of Human Resources".. ".B) Bullying is defined as 'repeated, unreasonable behaviour directed towards a person or group of people at a workplace that creates a risk to health and safety' (Comcare, July 2007). In this definition unreasonable behaviour is intended to cover all unreasonable behaviours including all forms of harassment and discrimination. This policy may be applied where these behaviours are reported and or suspected. Examples of Bullying and Harassment may include Abusive, insulting or offensive language; Excluding, marginalizing or isolating others; Behaving in a way which intimidates, frightens, humiliates or belittles others; Unjustified criticism (including yelling or screaming at someone); Intruding on someone's personal space including tampering with work or personal effects, spying on or pestering others; Spreading malicious gossip or misinformation; Setting impossible assignments or deadlines; Setting meaningless or demeaning tasks; and Withholding required resources or information necessary for effective work performance. Effects of Bullying and Harassment: The effects of bullying and harassment can be significant and far reaching, impacting individuals, teams and the workplace generally. Effects can include: Psychological stress, anxiety and depression; Reduced self confidence and self esteem; Reduced concentration; Increased absenteeism; Reduced productivity; Reduced morale and commitment; and Increased employee turnover. C) 'Prisca Rollins' in his paper on ".Types of Work Place Harassment". defined work place harassment as follows: Workplace harassment is illegal under Federal Equal Employment Opportunity (EEO) Laws. Workplace harassment is behaviour that is intimidating, hostile or offensive. It can cause an employee an array of psychological and physical symptoms, especially if it is not reported and the person continues to be exposed. It can cause an employee high levels of stress, loss of confidence, depression and job-related performance issues. Workplace harassment should be reported immediately. Employers should educate all employees on this topic, and managers or supervisors should investigate any

reports of harassment in the workplace. Workplace Harassment: According to The Equal Employment Opportunity Commission (EEOC), Title VII of the Civil Rights Act of 1964 (Title VII) and Civil Rights Act of 1991 offer protection from workplace harassment. Workplace harassment is any behaviour that is hurtful or shows aggression towards an employee and based on race, sex, colour, national origin, religion, sexual orientation, age, political affiliation, disability or veteran status. Harassment creates an intimidating, uncomfortable, or abusive environment and can interfere with an employee's performance. Harassment can also affect an employee's compensation or advancement opportunities. D) Alison Doyle defined workplace harassment as follows: Unwelcome, discriminatory conduct is legally considered harassment when it is bothersome enough to negatively impact the work environment. Also, if a supervisor's harassment results in an obvious change in the employee's salary status, this conduct would be considered unlawful workplace harassment. Workplace harassment includes unwanted verbal or physical behaviour regarding: - Sex - Gender - Gender Identity - Religion - Race - Skin Colour - Sexual Orientation - Physical or Mental Disability - Age Workplace harassment is not limited to sexual harassment, and does not preclude same gender harassment. Harassment can be about almost any personal characteristic, and between any two people - co-workers, managers, or even non- employees like clients, contractors, or vendors. The victim of harassment is not necessarily the person who is the target of the harassment, but, can be anyone affected by the offensive behaviour.". Indian Journal of Community Medicine (official publication of preventive & social medicine) in the Article ".A cross sectional study in Coastal South India defined ".work place harassment". thus: Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment. Finally, we may thus state or define the work place harassment as follows: 'Workplace harassment' is any type of unwelcome action towards an employee by the employer or anybody on his behalf that leads to difficulty in performing assigned tasks or causes the employee to feel he or she is working in a hostile environment. The harassment may be based on such factors

as race, gender, culture, age, sexual orientation, or religious preference".. In general, there are several factors that must be present in order to workplace harassment to be recognised. First, the conduct must be unwelcome and offensive to the employee. Second, the employee must voice his or her objection to the behaviour, allowing the offending individual or individuals to correct their workplace behaviour. Lastly, the conduct must be of such a nature that makes an impact on the ability of the employee to carry out his or her duties in an efficient and responsible manner. Some forms of workplace harassment are more common than others. Unwanted sexual advances by peers or supervisors is the most often cited form of workplace harassment. Both male and female employees may be approached by someone in the workplace who either hint or directly state that compliance will benefit the employee in some manner, or at least help to ensure that employment will continue. Today, many countries have laws that protect employees of all genders from this type of harassment. Workplace harassment may also take the form of prejudiced remarks or tasteless jokes that have to do with an individual's personal beliefs, age, or sexual orientation. While harassment of this type is widespread in many offices and other workplaces, employers are beginning to take a more aggressive stance on slurs, name-calling and veiled threats that target employees for any of these reasons. In addition, more countries are expanding harassment laws to include irresponsible remarks and various forms of intimidation that have to do with age, religion, and orientation.

24. In view of the above definitions, ".Harassment at work place". or ".Bullying". or any kind of unreasonable behaviour amounts to harassment at work place. Keeping in mind the definition of ".Harassment at work place". we would like to decide whether the attributions made against the 4th respondent, being the Manager of the 3rd respondent Branch, amounts to harassment at work place.

25. A bare look at the allegations made in the plaint, the appellant/plaintiff attributed harassment to the 4th respondent, who is the Manager of the 3rd respondent Branch. The specific instances of harassment attributed to the 4th respondent against the appellant are narrated in the earlier paragraphs of the judgment. In view of the specific instances pointed out in the plaint, we must necessarily look into the evidence to find out whether the appellant was able to

substantiate his contention by adducing satisfactory and cogent evidence entitling him to claim damages of Rs.14,00,000/- together with interest.

26. Admittedly, the appellant on promotion as an Officer reported to duty at the 3rd respondent's Branch at Banswada on 3.5.1999, whereas the 4th respondent joined as Manager of the said Branch on 24.6.1999. Thus, there is a gap of one month 21 days between reporting to duty in the 3rd respondent Branch by the appellant and the 4th respondent. It is alleged that the 4th respondent, from the date of reporting to duty as Manager of the 3rd respondent Branch, started ill-treating the appellant without any reason on one pretext or the other and due to intolerable ill-treatment, which is having its own impact on the health of the appellant, he applied for leave on 1.11.1999 and left the Branch. In the entire plaint, the nature of ill-treatment was not pleaded by the appellant. But, a stray allegation is made in para-3 (C) of the plaint and it is extracted hereunder, for better appreciation. ".The plaintiff submits that the 4th Defendant in his capacity as 3rd Defendant instead of guiding and supporting a Probationer, for reasons best known, started ill-treatment in one form or the other in the guise of Official Supervision and instead of appreciating the valuable and timely work and suggestions being rendered by Plaintiff to sort out the routine problems being experienced by the branch, started humiliating and ill-treating the Plaintiff indicative of official bias and vindictive temperament quite often trying to insult the Plaintiff in the presence of customers for no reason. The ill-treatment has become so high that whenever any advance intimation is given for availing of Casual Leave in connection with any unavoidable Social Function, the 3rd Defendant used to entrust avoidable official assignment for that day compelling the Plaintiff to remain on duty. As a result of it the Plaintiff could not attend the marriage of his niece on 27.10.99 and funeral of his maternal uncle on 13.10.99.". From the said specific allegations, it is clear that the 4th respondent, being the Manager of the 3rd respondent Branch, allegedly ill-treated the appellant in the presence of customers for no reason. How the appellant was being ill-treated was not explained in the pleadings though it is a material fact, so also in the evidence. Ill-treatment may be of different kinds. Similarly, harassment may be a different type. But, entrustment of work whenever the appellant gave advance intimation of availment of Casual Leave does not amount to ill-treatment or harassment. The 4th respondent, being

the Head of the 3rd respondent Branch, is having supervisory control and entrusts the work to different staff members in the Branch for smooth running of the financial operations in the Branch. Therefore, entrustment of work, which the appellant could not complete within a day and thereby unable to avail the Casual Leave and failed to attend the social functions, like marriage of his niece and funeral of his maternal uncle, do not amount to harassment or ill-treatment. However, intentional entrustment of unwanted work may amount to harassment, but it is not so.

27. In the examination-in-chief, PW.1 improved his case and testified that the 4th respondent started showing indifferent attitude and harassment of all possible sorts with his vindictive temperament. He quite often used to insult in the presence of customers and other staff members and use to abuse in vulgar language while alone for no reason. The alleged harassment in the presence of staff members and abusing him in vulgar language was not pleaded. Whatever amount of evidence adduced in proof of abusing in the presence of staff members and abusing him in vulgar language needs no consideration in the absence of any specific pleading. If really the appellant was being harassed or abused either in the presence of customers or any staff members, he would have examined either customers or employees of the 3rd respondent Branch in whose presence he was abused, harassed, humiliated etc., using filthy language. In the absence of any such evidence, the alleged harassment cannot be believed. The alleged harassment is verbal harassment. Verbal harassment in the workplace is a serious issue that can cause emotional harm and degrade the working environment. Since verbal harassment is an immediate problem that does not usually leave a verifiable record or evidence such as scars or bruises, it can sometimes be difficult to prove. There are certain ways a person can take to prove such harassment in the workplace, but without definite proof, getting supervisors, lawyers, and even judges to agree with the charge may be complicated.

28. One of the best ways to prove verbal harassment is to obtain the testimony of an objective third party. If another worker who is not involved in the situation overhears an incident of harassment, he or she may be willing to corroborate a victim's story. Since verbal abusers rarely take pains to hide their hurtful and

upsetting speeches, witnesses may be common. Unfortunately, since verbal harassment in the workplace often occurs with the participation or encouragement of a group of workers. Some witnesses may be afraid of personal retribution, since verbal abusers are often bullies. In addition to an internal witness, it may sometimes help to have a person who can testify as to the emotional damage brought by verbal abuse. If a person is suffering from emotional distress from repeated instances of abuse, it may be a good idea to confide his/her feelings before a counsellor or therapist. Not only can a counsellor help work through the distress, he or she may be able to serve as a professional witness and corroborate that the victim is suffering from emotional damage.

29. Another step a person can take to help prove a history of verbal harassment in the workplace is to keep a confidential diary where the dates, times, and exact circumstances of abuse are recorded. If possible, the victim should write down exactly what was said by his or her attacker, in order to create a comprehensive record. Any notes, emails, or phone messages that contain abusive attacks should also be saved, as these can be very helpful in creating a case against harassment.

30. Some people may consider using a tape or digital recorder to catch the abuser in action. This is a somewhat risky manoeuvre, as recording people without their knowledge may actually be illegal in some places. In an internal situation, where a worker is trying to convince supervisors or managers of verbal harassment, a recording may come in handy but the appellant did not prove verbal harassment in any of the modes.

31. Therefore, the alleged act of harassment by the 4th respondent was not established. The verbal harassment referred above does not amount to bullying or harassment of the appellant at work place.

32. The next contention of the appellant is that the 4th respondent demanded him to collect Rs.100/- from neighbouring Branch Managers un-officially at the time of handing over the Stationery pertaining to Public Issue of equity shares and he objected the same, thereupon the 4th respondent himself collected the amount and intensified the harassment once again on account of it. The details of the alleged harassment was not pleaded anywhere in the entire plaint, except alleging

that the 4th respondent humiliated and harassed continuously, both physically and mentally. In the examination-in-chief, he repeated the same allegation and in the cross-examination, a suggestion was put to him that no such request was made and got denial of it by the counsel for the respondent. On the other hand, the 4th respondent was examined as DW.2 and denied the allegation of request to collect the amount by the appellant. In the entire cross-examination, no suggestion was put to him that the 4th respondent requested the appellant to collect Rs.100/- from each neighbouring Branches and the same was not accepted by him. Therefore, there is nothing on record to prove the alleged demand and intensifying harassment for failure of the appellant to collect Rs.100/-. None of the neighbouring Branch Managers nor any of the employees of the 3rd respondent Branch were examined to prove the alleged harassment. Therefore, the alleged harassment on account of failure to collect Rs.100/- from neighbouring Branches remains as a bare allegation without any evidence.

33. Failure to sanction leave on medical grounds, entrustment of unavoidable work to the appellant whenever he gave advance intimation for availment of Casual Leave and retaining in the office till completion of work is one of the contentions termed as harassment of the appellant by the 4th respondent.

34. The 3rd respondent is a Branch of the Banking institution running in a semi-urban area dealing with the money and the atmosphere in the office must be congenial to improve the efficiency of each and every employee and if any employee is put to any inconvenience, there is a possibility of committing mistakes in discharge of their duties, which would affect the business of the Branch. The Branch consisting of 2 Officers, 1 Manager, 7 Clerks, and 2 other supporting staff members in the Attender cadre, as per the admission made by the appellant in his cross-examination. If anyone of the employee applied for leave for short or long periods, the other employee has to bear the entire work load of that employee, who is availing leave and, certainly, such availment of leaves frequently would affect the efficiency of the other employee. Therefore, availment of leave without any sufficient reason may affect the business in the Branch office. The 4th respondent, being the Manager of the 3rd respondent Branch, is having supervisory control over the other employees working in the Branch, including the

appellant, and he is the ultimate authority, who is responsible for the acts of all the staff members in the Branch. Therefore, he must have effective control over the staff and get the work done by the employees in the Branch. As such, in discharging his duties, the 4th respondent is bound to entrust the work to the employees in the Branch and to get the work done by them. The 4th respondent used to distribute the work among all the staff members, subject to their eligibility to attend on such work. The appellant did not specify the nature and any date on which unavoidable work was entrusted to him by the 4th respondent, thereby retained him in the office without availing Casual Leave, except making a bald allegation in the plaint and repeating the same in the evidence. Therefore, such baseless allegation without any proof cannot be termed as harassment within the definition of bullying or harassment at work place. Even otherwise, the entrustment of work to the appellant and other employees is only a part of administrative control and, as such, attending on administrative work in the office, at the instance of the 4th respondent, does not amount to harassment for the reason that the appellant and other staff members of the Branch were engaged to do the work, but not for availing Casual Leaves. Therefore, the alleged entrustment of work does not amount to bullying or harassment at work place, since such work is unavoidable even as per the appellant's contention.

35. The appellant also contended that failure to sanction sick leave though the request for grant of such leave is supported by medical evidence amounts to harassment at work place. In fact, the 4th respondent, being the Manager of the 3rd respondent Branch, is competent to sanction or refuse the leave applied for by the appellant or any other staff member as per the Syndicate Bank Officers Services Regulations, 1979 and Syndicate Bank Officer Employees (Conduct) Regulations, 1976. If the 4th respondent finds that the leave applied for is without any basis, he may decline to sanction leave. In fact, on earlier occasions, the 4th respondent, being the Manager of the 3rd respondent Branch, sanctioned leave to the appellant for the period from 24.7.1999 to 31.7.1999 on the ground that his father was sick, further leave from 20.8.1999 to 6.9.1999 on the ground that his mother was suffering from cardiac problem. If really the 4th respondent's behaviour is vindictive and unacceptable or if he is so particular to harass or bullying the appellant at the work place, the question of sanction of leave for the

said period does not arise. Even according to the material on record, the 4th respondent reported to duty on 24.6.1999 and sanctioned leave to the appellant for the period from 24.7.1999 to 31.7.1999 and again from 20.8.1999 to 6.9.1999. So, the gap between the 4th respondent reporting to duty and the appellant availing leave is hardly one month. Therefore, the question of subjecting the appellant to vindictive harassment during the said period of one month, in normal course of events, does not arise. The appellant applied for leave from 1.11.1999 to 15.11.1999 and again from 25.11.1999 onwards. But, leave was not granted and treated the same as absence from duty.

36. The specific contention of the appellant is that he became sick due to the harassment by the 4th respondent. It is to be noted that the actual period he spent on duty before availment of leave from 24.7.1999 is only one month and it is difficult to accept that the 4th respondent subjected him to harassment at work place which deteriorated his health condition, both physically and mentally, and the same is unbelievable. If, for any reason, the appellant was subjected to harassment like abusing, it will have its own impact on mental condition, but it would not cause any damage to PVIDL.4/5 and would not affect the optic nerve, since these two are physical conditions of the appellant. On the other hand, on account of availment of leave continuously or intermittently with short intervals would dislocate the work in the office where employees have to work with great sense of responsibility as they are dealing with the financial transactions with its customers and lending amount to its debtors and collecting the amount. Their duties are numerous and on account of applying leave constantly on one ground or the other, the work in such congenial atmosphere would hamper. Further, the leave was on medical grounds supported by various medical records commencing from Exs.A.1 to A.4 and A.6 to A.11 showing that the appellant is suffering from perennial physical problems. Even otherwise, these documents are suspicious. Exs.A.1 to A.6 are only medical prescriptions issued by the Diagnostic Centres which did not disclose any abnormality in the health of the appellant. Similarly, Exs.A.6 to A.11 go to establish that the appellant was advised to take medicines prescribed in the said prescriptions and medicines purchased by him. However, Ex.A.13 medical certificate issued by Dr. Ravi Babu, Civil Surgeon, Area Hospital, King Koti, Hyderabad, dated 3.12.1999 shows that the appellant is suffering from

'LBA Sc' in a bad state of health and basing on his opinion, declared that the appellant required rest for a period of 21 days. The contents of Ex.A.13 creates any amount of suspicion about its authenticity for the reason that the Medical Officer is supposed to refer the previous leave absence in the Medical Certificate, but he suggested 21 days exactly and it was issued on 3.12.1999, the same cannot be believed in the absence of examination of the doctor, who issued the said certificate and prescribed the medicines. Mere basing on the medical prescriptions and pathology reports issued by the Diagnostic Centres, the certificate allegedly issued by Dr. Ravi Babu that the appellant was suffering from serious ill-health on account of the alleged harassment cannot be believed. None of the documents disclosed the cause for those problems is mental stress or the alleged harassment by the 4th respondent. In the absence of any medical evidence i.e., examination of the doctor, who is competent to speak about the cause of the ailments allegedly being suffered by the appellant, it is highly difficult for this Court to believe that the 4th respondent subjected the appellant to harassment or bullying at work place, which affected his health condition badly and led him to apply for voluntary retirement from service.

37. A strange contention advanced on behalf of the appellant is that he applied for voluntary retirement from service only on account of harassment by the 4th respondent. However, it was denied by the respondents. At this stage, we feel that it is better to advert to the contents of Ex.B.1, equivalent to Ex.A.32, which is the basis for applying voluntary retirement from service, duly annexing a proforma of application for voluntary retirement. The contents of Ex.A.32 disclosed that the actual practical problem leading to deterioration of his health in the earlier letters that the doctors directed him to undergo regular check ups and needs specialised care for some more time, he gave primary importance to his health by giving top priority to the institutional interest, therefore, he was compelled to make a request for shifting from the present work place and transfer him from Banswada Branch to any other place where medical facilities or specialists in the field of Orthopaedic, Neurology, Psychology are available or, if it is not feasible for any reason, requested to permit him to retire under VRS Scheme. Thus, in Ex.A.32, the appellant referred the earlier letter dated 5.2.2000 running into 12 pages making unwarranted allegations against the 4th respondent Branch Manager without any

basis.

38. In any view of the matter, in the proforma application dated 16.2.2000 for acceptance of retirement under VRS Scheme, which is part of Ex.A.32, the appellant accepted to retire voluntarily from service. Of course, proforma application is a standard form and unless those conditions are accepted by the employee, they shall not be retired. But, the consent for retirement was not disputed on the ground that it is a standard form, either in the pleadings or in the evidence. Thus, the contents of application for VRS clearly show that the appellant, having gone through the contents carefully, applied for voluntary retirement. In view of opting for retirement voluntarily and accepting the same without any conditions by the respondents is indicative of his inability to continue in service, giving primary importance to his health rather than institutional interest. Even if the cumulative effect of the entire documentary evidence is taken into consideration, certain allegations are made attributing harassment of the appellant by the 4th respondent without disclosing any details. Even if one or two instances are disclosed, they are not supported by any evidence.

39. When the appellant opted to retire voluntarily and accepted the retirement benefits, he cannot now contend that it is not voluntary but due to harassment, the appellant cannot be allowed to approbate and reprobate and thereby estopped to raise such plea in view of the principle laid down in BANK OF INDIA Vs. O.P. SWARANAKAR¹, the Apex Court held as follows: The writ petitioners filed the writ petitions, inter alia, questioning the validity of the Voluntary Retirement Scheme floated by the Nationalised Banks. In any event, validity of clause 10.5 of the said scheme stipulating that offer once made by an employee could not be withdrawn was in question. The appellants herein are 'State' within the meaning of Article 12 of the Constitution of India. The questions raised by the writ petitioners thus could be raised in a proceeding under Article 226 of the Constitution of India. Furthermore, in the event it be held that the action of the appellants was arbitrary and unreasonable, the same would attract the wrath of Article 14 of the Constitution of India. Furthermore, the right of the employee to continue in employment, which is a fundamental right under Article 21 of the Constitution of India could not have been taken away except in accordance with law."

40. In *Y.P. SARABHAI v. UNION BANK OF INDIA*², the Apex Court held as follows: ".We are of the opinion that the appellant is not entitled to any relief in these proceedings. The appellant remained absent from his duty for a very long time i.e. from 3.6.1997 to 23.11.1997 without any reasonable cause and justification in spite of the respondent's requests to join the duty and in spite of the respondent's granting him further time to join the duty. The conduct of the appellant in remaining absent for such a long time shows that he was bent upon to evade the transfer order in any possible manner. The grounds of ailment were taken as a ruse to avoid transfer which is amply proved by the conduct of the appellant, when he had un-authorizsedly remained absent on the ground that he was unable to attend the duty due to illness for such a long but he was quite capable of attending the court proceedings on the various days and was also capable of coming to Delhi to file a petition before this Court. This Court has repeatedly held that the factual finding of the Disciplinary Authority after holding a detailed enquiry and after going through elaborate evidence are not assailable in the courts unless the breach of principles of natural justice or the violation of any rules or any material irregularity on the face of record is alleged and shown. However, in this case the High Court in the jurisdiction under Article 226 of the Constitution of India has again gone into all aspects of the enquiry in detail and has come to the same factual finding as the Disciplinary Authority and the Appellate Authority. Such concurrent findings by three different Authorities including the High Court should not be disturbed by this Court under Article 136 of the Constitution of India. We, therefore, have no other option except to dismiss this appeal. Accordingly, the appeal stands dismissed."

41. In *STATE BANK OF INDIA v. ANJAN SANYAL*³, the Apex Court held as follows: ".We are also of the opinion that there was no infirmity with the order dated 8.8.1991, transferring the respondent to Siliguri and the High Court was totally in error in interfering with the said order on the hypothesis that until and unless the respondent get his emoluments for the entire period as well as promotion, question of transferring him out of Narkeldanga Branch does not arise. Such a conclusion is not permissible to be drawn on the fact situation and we, therefore, unhesitatingly set aside the same. We further hold that the order of transfer to Siliguri was also valid and the respondent did flout the same.". The

Apex Court further observed that- ".We are told that the Stat Bank of India Officers Service Rules deal with the said situation, and, therefore, the competent authority of the bank would deal with the same. But we have no hesitation in setting aside the directions of the High Court, directing the bank to pay the salary and other benefits to the respondent in the case in hand. In the aforesaid premises, we set aside the judgment of the learned Singh Judge as well as that of the Division Bench of Calcutta High Court and allow this appeal. The writ petition filed by the respondent in the High Court stand dismissed."

42. In SYNDICATE BANK v. GENERAL SECRETARY, SYNDICATE BANK STAFF ASSOCIATION⁴, the Apex Court held as follows: ".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 Avas 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."

43. Admittedly, the appellant suddenly left the office on one occasion and handed over the keys to his colleague before sanction of leave and also applied for leave and left the office without sanction either on medical grounds or otherwise and till the leave was not extended at any point of time. On the other hand, the 4th respondent directed the appellant to report to duty by issuing telegram and letter under Exs.A.18 and A.19. Despite it, the appellant did not choose to report to duty and addressing letters running into pages making certain attributions against the 4th respondent. Such a conduct denounce the prestige of a premier banking institution in the country and the allegations made in those letters is nothing but creation of apprehension in the mind of the 4th respondent that the appellant may stoop to any extent and attribute anything, thereby there is a possibility of losing

effective supervision over the staff members and consequently the administration would fail and leads to anarchy. Thus, the conduct of the appellant goes to show that he tried to have control over the 4th respondent and tried to bring him to his terms to grant leave whenever required or to recommend his case for transfer from Banswada Branch to any other place. If such attitude is encouraged, it is difficult to any official to have effective control over the administrative staff and such conduct hampers the administration in the office.

44. In support of his contentions, Sri C.S.K.V. Ramana Murthy, learned counsel appearing for the appellant placed reliance on a judgment in D.E.S.U. v. TARA CHAND (DELHI)⁵, wherein it was held that when a letter was addressed along with resignation, it cannot be accepted straight away without enquiring about the cause for such resignation.

45. In the instant case, the letter marked as Ex.B.1 equivalent to Ex.A.32, shall be read as a whole and not as a part of it. Ex.B.1 is a letter along with the proforma application for VRS. In the said letter, the appellant sought for transfer from Banswada Branch to any other place where medical facilities are available and, in the alternative, requested to retire him on VRS. The respondents, after considering his case and also his absence from duty, accepted his request for retirement voluntarily. Even if the entire letter is taken into consideration, the appellant is not entitled to claim any relief in this appeal.

46. The learned counsel also relied upon another judgment in P.K. RAMACHANDRA IYER v. UNION OF INDIA⁶. It is a case where a member of faculty was appointed but later he was subjected to harassment creating unhealthy atmosphere and made five allegations against the head of the department and a committee was appointed to enquire into the allegations several. A report was submitted but no purpose was served. Thereupon, the employee approached the High Court and later to the Apex Court. During hearing, the counsel for the appellant made a statement and after recording the statement of Lokur, advocate, issued necessary directions to consider reinstatement of the petitioner as a member of the faculty and held as follows: Dr. Gupta's complaint was then noted and that is the complaint which awaits redressal. It clearly transpires that Dr.

Gupta was hounded out of the Faculty membership and now the respondents try to hide this inconvenient fact by treating the cry of agony in the letter dated May 30, 1970 as letter of resignation. Apart from being harsh, it is an unethical attitude on the part of the ICAR. However, at this stage, we would record a statement made by Mr. Lokur, learned counsel appearing, for ICAR and its affiliates before this Court on July 21, 1976 at the hearing of S. L. P. No.2339/75 preferred by petitioner Dr. Gupta which reads as under : ".Mr. Lokur states that the respondent council would consider the question of taking back the petitioner as a member of the Faculty.". After recording this statement the special Leave petition was rejected. It was hoped that the respondents would act to honour the statement of their learned counsel. Now that the matter is being disposed of we direct the council to carry out its statement made before this Court within three months from the date from today."

47. The learned counsel also drawn the attention of this Court to a decision in PRABHA ATRI v. STATE OF U.P.⁷, wherein the Apex Court held as follows: "..... That the letter cannot be construed, in our view, to convey any spontaneous intention to give up or relinquish her office accompanied by any act of relinquishment. To constitute a 'resignation', it must be unconditional and with an intention to operate as such. At best, as observed by this Court in the decision in P.K. Ramachandra Iyer (supra). It may amount to a threatened offer more on account of exasperation, to resign on account of a feeling of frustration born out of an idea that she was being harassed unnecessarily but not, at any rate, amounting to a resignation, actual and simple. The appellant had put in about two decades of service in the Hospital, that she was placed under suspension and exposed to disciplinary proceedings and proposed domestic enquiry and she had certain benefits flowing to her benefit, if she resigns but yet the letter dated 9.1.1999 does not seek for any of those things to be settled or the disciplinary proceedings being scrapped as a sequel to her so- called resignation. The words 'with immediate effect' in the said letter could not be given undue importance dehors the context tenor of language used and the purport as well as the remaining portion of the letter indicating the circumstances in which it was written. That the management of the Hospital took up such action forthwith, as a result of acceptance of the resignation is not of much significance in ascertaining the true or real intention of

the letter written by the appellant on 9.1.1999. Consequently, it appears to be reasonable to view that as in the case reported in P.K. Ramachandra Iyer (supra), the respondents have seized an opportunity to get rid of the appellant the movement they got the letter dated 9.1.1999, without due or proper consideration of the matter in a right perspective or understanding of the contents thereof. The High Court also seems to have completely lost sight of these vital aspects in rejecting the Writ Petition.". The principle laid down in the above case has no application for the reason that, in the instant case, a special scheme of Voluntary Retirement from Service was in existence by then and the appellant voluntarily applied for VRS.

48. The learned counsel further relied on a decision in STATE OF BIHAR v. SUBHASH SINGH⁸, wherein the Apex Court held as follows: ".The Constitution of India is the supreme law of the land, having flown from "We, the people of India, i.e., Bharat, having solemnly resolved to constitute India into a sovereign, socialist, secular democratic Republic. The sovereign power is distributed among the Legislature, the Executive and the Judiciary with checks and balances but not in water-tight rigid mould. In our democracy governed by the rule of law, the Judiciary has expressly been entrusted with the power of judicial reviews essential in quiver. Basically judicial review of administrative actions as also of legislation is exercised against the action of the State. Since the State or public authorities act in exercise of their executive or legislative power, they are amenable to the judicial review. The State, therefore, is subject to *etat de droit*, i.e. the State is submitted to the law which implies that all actions of the State or its authorities and officials must be carried out subject to the Constitution and within the limits set by the law, i.e., constitutionalism. In other words, the State is to obey the law. The more the administrative action in our welfare State expands widely touching the individuals, the more is the scope of judicial review of State action, Judicial review of administrative action is, therefore, an essential part of rule of law. The judicial control on administrative action, thus, affords the Courts to determine not only the constitutionality of the law but also the procedural part of administrative action as a part of judicial review. The Constitution has devised permanent bureaucracy as part of the political executive. By operation of Art. 53 read with Arts. 73 and 74 as well as Art. 154 read with Arts. 163 and 166, the business of the State is carried

on in accordance with the rules of business issued by the President/the Governor, as the case may be, or the rules made for the subordinate officers in that behalf. The normal principle that the permanent bureaucracy is accountable to the political executive is subject to judicial review. The doctrine of "full faith and credit" applied to the acts done by the officers and presumptive evidence of regularity of official acts done or performed, is apposite in faithful discharge of duties to elongate public purpose and to be in accordance with the procedure prescribed. It is now settled legal position that the bureaucracy is also accountable for the acts done in accordance with the rules when judicial review is called to be exercised by the Courts. The hierarchical responsibility for the decision is their in-built discipline. But the Head of the Department/designated officer is ultimately responsible and accountable to the Court for the result of the action done or decision taken. Despite this, if there is any special circumstance absolving him of the accountability or if someone else is responsible for the action, he needs to bring them to the notice of the Court so that appropriate procedure is adopted and action taken. The controlling officer holds each of them responsible at the pain of disciplinary action. The object thereby is to ensure compliance of the rule of law."

49. The learned counsel also relied on a decision in *M. PAUL ANTHONY v. BHARAT GOLD MINES LTD.*⁹, wherein the Apex Court held as follows: ".On joining Govt. service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Govt. The Govt, only because it has the power to appoint does not become the master of the body and soul of the employee. The Govt. by providing job opportunities to its citizens only fulfils its obligations under the Constitution including the Directive Principles of the State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the government or any other employer, like Instrumentalities of the Govt. or Statutory or Autonomous Corporations etc., is regulated by the terms of contract of service or Service Rules made by the Central or the State Govt. under the Proviso to Article 309 of the Constitution or other Statutory Rules including Certified Standing Orders. The Fundamental Rights, including the Right to Life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. The provision for payment of Subsistence

Allowance made in the Service Rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in *State of Maharashtra v. Chanderbhan*, (1983) 3 SCR337: (1983) 3 SCC387: AIR 1983 SC803 struck down a Service Rule which provided for payment of a nominal amount of Rupee one as Subsistence Allowance to an employee placed under suspension. This decision was followed in *Fakirbhai Fulabhai Solanki v. Presiding Officer*, (1986) 3 SCC131: (1986) 2 SCR1059: AIR 1986 SC1168 and it was held in that case that if an employee could not attend the departmental proceedings on account of financial stringencies caused by non-payment of Subsistence Allowance, and thereby could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated.". The principles laid down in the above decisions are not in dispute, but they are applicable only when the voluntary retirement is questioned. But, here the appellant claimed damages for the alleged harassment, which lead the appellant to apply for voluntary retirement. Hence, the legal decisions need no consideration and basing on the above decisions, the judgment and decree need not be interfered.

50. The other contentions of the appellant that arrears of salary on account of pay revision, privilege leave salary, re-fixation of pension pursuant to the revision of pay scales, differential amount of gratuity were not calculated as per the revised pay scales and it amounts to harassment are concerned, there is a remedy available to the appellant for redressal of such grievances and filing of a suit would not serve any purpose. On the other hand, the conduct of the appellant from the date of joining as Officer in Banswada Branch till his voluntary retirement shows that he is avoiding the work and absenting himself without attending to duty and without obtaining prior sanction of any kind of leave and invented various documents so as to get sick leave or any other leave. Perhaps, he is disinterested to work in Banswada Branch, but, ultimately failed to achieve his object. If really the appellant was subjected to harassment or bullying at work place by the 4th respondent, there is a machinery available for redressal of his grievance and he would have reported the same to the higher authorities i.e., respondent Nos.1 and 2. Having maintained silence for more than a year after accepting his VRS application and retiring from service voluntarily accepting retirement benefits, he

invented the story of harassment, which is not acceptable.

51. Absence from duty without prior sanction of any kind of leave amounts to misconduct as per the Syndicate Bank Officers Services Regulations, 1979 and Syndicate Bank Officer Employees (Conduct) Regulations, 1976. Therefore, the 4th respondent rightly treated the period of absence as unauthorised and such treatment cannot be termed as harassment for the reason that the leave is not a right and it is a matter of discretion of the sanctioning authority. If, for any reason, the 4th respondent did not sanction the leave and harassed the appellant, there is a forum i.e. the Hierarchy in the administration, but without resorting to such avenues filed the present suit.

52. As per the material available on record, the appellant admittedly left the bank by applying leave initially and later on medical grounds without prior sanction. Such conduct directly amounts to unbecoming conduct of an employee and it is nothing but lack of devotion to duty.

53. In similar circumstances, in a decision reported in S. KRISHNA MURTHY v. INDIAN OVERSEAS BANK, MADRAS AND OTHERS¹⁰, His Lordship Justice V.Rajagopala Reddy held as follows: ".Unauthorised absence from duty without prior sanction is one of the instances of the misconduct in Rule 13 of Indian Overseas Bank Officer Employees Discipline and Appeal Regulations, 1976"..

54. In the facts and circumstances of the above case, though leave has not been sanctioned as sought for, he had been extending the leave from time to time and on 9.5.1995 he was informed that the leave was declined to him and his period of absence was treated as unauthorised. In spite of it, he did not report to duty and the Hon'ble Court observed in para-10 that absenting himself on the ground of illness and that he did not report for duty at the place of posting on transfer. However, it is open to the petitioner to satisfy the charge that such permission could not be obtained in unavoidable circumstances and that he could not, for good reasons, report for duty and that matter has to be inquired into in pursuance of the charge sheet.

55. The facts in the above decision are almost similar to the facts in the present case. Hence, same principle can be applied here also.

56. In another judgment reported between Delhi Transport Corporation vs. Sardar Singh, dated 12.8.2004, the Bench consisting of Justice S.N. Variava & Justice Arijit Pasayat in Appeal (Civil) No.9600 of 2003, Their Lordships held as follows: ".When an employee absents himself from duty, even without sanctioned leave for very long period, it prima-facie shows lack of interest in work. Negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorised. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant material.".

57. In another decision rendered H.K. Erranna vs. The Chairman and Managing Director, National Textiles Corporation Ltd. and ors¹¹., His Lordship Justice G. Bikshapathy held as follows: ".Failure to report to duty or unauthorised absence amounts to misconduct, but held that, it is not a grave misconduct.".

58. From the settled legal position, unauthorised absence without sanction of leave and avoidance of proceedings issued by the Controlling Officer declining leave clearly indicates that, absence of the appellant is motivated and his failure is nothing but dishonest and thereby it amounts to dereliction of duty and misconduct as per Syndicate Bank Officers Services Regulations, 1979 and Syndicate Bank Officer Employees (Conduct) Regulations, 1976.

59. In view of the principles laid down in the above judgments, coupled with Syndicate Bank Officers Services Regulations, 1979 and Syndicate Bank Officer Employees (Conduct) Regulations, 1976, absence of the appellant for the period from 1.11.1999 to 15.11.1999 and again from 25.11.1999 till he retired from service voluntarily without obtaining prior sanction amounts to unauthorised absence and in a way dereliction of duty due to his dis-inclination to report to office in spite of the letters addressed by the 4th respondent, being the Manager of the 3rd respondent Branch. When the appellant himself is guilty of misconduct i.e., unauthorised absence without prior sanction of any kind of leave, he is precluded to contend that the 4th respondent harassed him and such harassment affected

his health badly. In the absence of any proof, the allegation that the alleged harassment is the proximate cause for his ill-health and that a short period of one month deteriorated his health badly, cannot be accepted and believed. The alleged acts complained against the respondents do not fall within the purview of harassment at work place.

60. On a consideration of the entire evidence available on record, coupled with the legal position, the trial Court rightly came to the conclusion that the appellant himself applied for voluntary retirement on his personal grounds under Ex.B1 equivalent to Ex.A32 while requesting for transfer. The word ".Voluntary". used in the scheme itself indicates that the retirement is with free consent. Apart from that, the appellant, having received the order and the benefits without any objection or demur, is not entitled to contend now that he applied for voluntary retirement from service due to the harassment by the 4th respondent. Thus, the appellant is estopped now to go back and contend as averred in the plaint. Hence, the finding of the trial Court is fully supported by legal reasoning and does not call for any interference by this Court in this appeal.

61. In view of the foregoing discussion, we hold that the retirement of the appellant was not due to harassment of 4th respondent at work place and that the appellant did not sustain any loss, since his retirement is voluntarily. The scheme of voluntary retirement did not contemplate hearing of employee before passing order. However, the statement made by the appellant in proforma of application is suffice to conclude that his retirement is voluntary on personal grounds. In the absence of any rule providing personal hearing of appellant, passing an order permitting appellant to retire from service voluntarily does not amount to violation of principles of natural justice. Thereby, he is not entitled to claim any relief, much less damages of Rs.14,00,000/- with interest @ 12% per annum.

62. Accordingly, this point is held against the appellant and in favour of the respondents. In re. Points No.2 to 6 :

63. One of the contentions raised by the appellant is that he is entitled to recover arrears of Rs.23,000/- along with interest @ 12% per annum on account of pay revision for the period from 1.11.1997 to 2.5.1999 and from 3.5.1999 to 27.4.2000.

But, the respondents contended that the entire amount was paid fixing his pay basing on the revised pay scales. In fact, the trial Court gave a direction to the 3rd respondent/defendant to verify the amount paid to the appellant/plaintiff and then the 1st respondent filed a Memo disclosing the actual amount paid to the appellant, which is marked as Ex.X.1, and before the trial Court, learned counsel for the appellant/plaintiff also filed a Memo withdrawing the claim of the appellant/plaintiff on Issue No.5. Therefore, there is no need to go into the merits again to find out the amount due to the appellant, as the claim was not pressed before the trial Court. Thus, the trial Court did commit no error in declining the relief of payment of arrears of salary of Rs.23,000/-.

64. The appellant also claimed salary for the period from 1.11.1999 to 15.11.1999 and from 25.11.1999 to 27.4.2000 by sanctioning sick leave, instead of treating the same as unauthorised absence. The respondents denied their liability to pay salary as the 4th respondent, being the Manager of the 3rd respondent Branch, who is the competent authority to sanction leave to the appellant, treated the said period as unauthorised absence since the appellant did not report to duty despite the letter and telegram and ultimately continuously remained absent till his retirement. On the other hand, the leave applied for is sick leave and the same cannot be sanctioned for the said period, since Ex.A.25 Certificate issued by the Panel Doctor, Dr. Kasturi Narasimhan did not disclose any ailment being suffered by the appellant and the contents of the said certificate are extracted hereunder. ".This is to certify that Sri L. Nagaraju, Asst. Manager, Probationer, Syndicate Bank, Banswada Br., Nizamabad, has attended for Medical check up as per the Telegraphic orders of Manager of Banswada Br. On 19.1.2000 at 11 AM.". A perusal of the above certificate shows that except intimating about the attending for Medical check up, he did not disclose the ailment which the appellant is suffering from. In the absence of any evidence to that effect, basing on the prescriptions, pathological reports etc., and without examining the doctors concerned, who issued those documents, the said period cannot be treated as sick leave and the appellant is not entitled to claim salary for the said period.

65. The appellant also claimed privileged leave salary of Rs.16,720/- with interest @ 12% per annum, but he did not produce the privilege leave account to prove

that the privilege leave is available to his credit so as to claim the said amount. Thus, the appellant failed to prove that the privilege leave is available to his credit so as to claim Rs.16,720/- towards arrears.

66. Finally, the appellant also claimed differential amount of gratuity of Rs.28,990/- with interest @ 12% per annum. As directed by the trial Court, a calculation Memo, which is marked as Ex.X.1 shows that the respondents calculated his arrears basing on the revised pay scales and paid the entire amount. Therefore, nothing remained unpaid and thereby the appellant is not entitled to recover any amount from the respondents.

67. On an overall consideration of the entire material available on record, we are totally in agreement with the findings recorded by the trial Court and we find no error warranting interference with the judgment and decree of the trial Court. Hence, the findings of the trial Court are hereby confirmed.

68. Accordingly, the appeal is dismissed. No order as to costs.

69. The miscellaneous petitions pending, if any, shall stand closed.
_____ ASHUTOSH MOHUNTA, J.

_____ M. SATYANARAYANA MURTHY, J.

18.12.2013.

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