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Court : Karnataka

Decided On : May-25-1998

Reported in : ILR1998KAR2793; 1998(4)KarLJ385

Judge : H.L. Dattu, J.

Acts : Syndicate Bank (Officers) Service Regulations, 1979 - Regulations 16 and 20; [Constitution of India](#) - Article 226;

Appeal No. : Writ Petition No. 15647 of 1989

Appellant : Devdas Rao

Respondent : Syndicate Bank, Manipal, Dakshina Kannada District and Another

Advocate for Def. : Sri Supreeth for ;Sri U.L. Narayana Rao, Senior Counsel

Advocate for Pet/Ap. : Sri K. Subba Rao, Adv.

Judgement :

ORDER

1. Petitioner was a Deputy Divisional Manager in Syndicate Bank. He is before this Court primarily for a direction to the respondent-Bank to pay him full salary at the revised rates inclusive of all allowances from 6-3-1987 till the end of February

1989 and to quash letter bearing No. PD : PAS BNG : 196, dated 15-2-1989.

2. Briefly the background facts are, while working as Deputy Divisional Manager, petitioner by his letter dated 6-12-1986 submitted an application to the General Manager of the Bank, seeking voluntary retirement with effect from 6-3-1987 as required under Clause 20(2) of Syndicate Bank (Officers) Service Regulations ('Regulations' for short). Bank in turn by its letter dated 7-1-1987 was pleased to inform the petitioner that his letter of resignation has been accepted with effect from 6-3-1987. Before the resignation could come into effect, Bank by its registered letter dated 4-3-1987 has informed the petitioner that the acceptance of petitioner's resignation by their letter dated 7-1-1987 has been kept in abeyance in view of the contemplated disciplinary proceedings against him for certain acts of omissions and commissions said to have been committed by him while working as Deputy Divisional Manager in Bangalore. For the purpose of this case, I need notice what transpired between the parties in between 4-3-1987 till 15-2-1989, on which date, the Bank once again informed the petitioner that his application seeking voluntary/resignation had been accepted with effect from 6-3-1987 subject to fulfilment of certain conditions. Aggrieved by the action of the respondent-Bank in accepting petitioner's request for voluntary resignation retrospectively and further for payment of salary and allowances for the period 6-3-1987 till 15-2-1989, the officer/employee of the Bank is before this Court in a petition filed under Article 226 of the Constitution.

3. Respondents have filed a lengthy counter statement resisting the relief sought for by the petitioner. They contend that by virtue of Clause 20(3) of the Bank's Regulations and in view of the notice dated 19-2-1987 and the Bank's letter dated 4-3-1987, keeping the acceptance of petitioner's resignation from services of the Bank in abeyance, petitioner ought to have reported for duty but on his own did not report for duty nor attended the Bank with effect from 5-3-1987 on the mere assumption that he has been relieved from the services of the Bank by virtue of the letter dated 5-1-1987 and they further assert that since the petitioner did not report for duty with effect from 6-3-1987 and since he has not rendered any service to the Bank, he is not entitled for salary for period 6-3-1987 till 15-2-1989.

4. Sri K. Subba Rao, learned Counsel for petitioner contends that since petitioner was relieved only on 15-2-1989, he is entitled for salary and other allowances for the period 6-3-1987 till 15-2-1989. That apart submits that the respondent-Bank could not have accepted the request of the petitioner for voluntary resignation from the services of the Bank with a retrospective date and therefore submits the letter of the Bank dated 15-2-1989 requires to be set aside by this Court as illegal and invalid.

5. The issues that requires to be considered and decided is: (i) whether petitioner is entitled for salary and other allowances for the periods 6-3-1987 till 15-2-1989; (ii) whether the respondent-Bank could have accepted the request of the petitioner seeking voluntary resignation with retrospective effect.

6. To decide the issues in the lis, it is relevant at the outset to notice Service Regulation of the respondent-Bank. It is not in dispute that the petitioner is governed by the provisions of Syndicate Bank (Officers) Service Regulations, 1979. For our purpose, the relevant regulation is Regulation 20 of the Regulations. It is as under:

20. Termination of service.--(1) Subject to sub-regulation (3) of Regulation 16, the Bank may terminate the services of any Officer by giving him three months' notice in writing or by paying three months' emoluments in lieu thereof.

(2) An Officer shall not leave or discontinue his services in the Bank without first giving a notice in writing of his intention to leave or discontinue the service or resign. The period of notice required shall be three months and shall be submitted to the competent authority as prescribed in these regulations.

(3) (a) Notwithstanding anything to the contrary contained in the sub-regulation (2) an Officer against whom disciplinary proceedings are pending shall not leave/discontinue or resign from his service in the Bank without the prior approval in writing of the competent authority and any notice of resignation given by such an Officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the competent authority.

(b) Disciplinary proceedings shall be deemed to be pending against any employee for the purpose of this regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings should not be instituted against him or where any charge-sheet has been issued against him and will be deemed to be pending until final orders are passed by the competent authority.

(c) An Officer under suspension on a charge of misconduct shall not be retired or permitted to retire on his reaching the date of compulsory retirement, but shall be retained in service until the enquiry into the charge is concluded and a final order is passed thereon.

7. Regulation 20 regulates termination of service and by sub-regulation (2) thereof, a prohibition has been imposed on an Officer from leaving, or discontinuing his service in the Bank or resigning therefrom without giving a notice in writing for three months. By clause (a) of sub-regulation (3), in case of disciplinary proceedings against an officer, he cannot leave, discontinue or resign from service without prior approval in writing of the competent authority and any notice of resignation given by such an officer before or during the disciplinary proceedings cannot take effect unless it is accepted by the competent authority. By clause (b) of sub-regulation (3), it has been laid down that the placement of the officer under suspension or issuance of notice to show cause as to why disciplinary proceedings should not be instituted or submission of the charge-sheet would have the effect, as if a disciplinary proceedings is pending until final orders are passed by the competent authority.

8. Having seen the relevant provisions and the possible construction that could be placed, let me now advert to the fact situation. Letter dated 28-12-1986, seeking resignation from the services of the Bank with effect from 6-3-1987 was accepted by the respondent-Bank by their letter dated 7-1-1987, and that order was kept in abeyance by the Bank by its subsequent letter dated 4-3-1987 and further by a notice dated 19-2-1987, respondent-Bank directed the petitioner to offer his explanation for the alleged irregularity under which a loan of Rs. 7.50 lakhs was released to one M/s. Shymaraju and Company, for construction of a multistoried

car parking complex in Bangalore. In response to the notice, petitioner filed his reply dated 16-3-1987 and in that refers to copies of the letter enclosed along with the notice and then states that in view of the earlier correspondence that he deems that he stands relieved on 5-3-1987 from the services of the Bank, It is not his case before this Court that he reported for duty on and after 6-3-1987 and he has worked in the respondent-Bank in the post held by him earlier, nor it is his case before this Court that he was prevented by the respondents in discharging his duties as an officer of the Bank. The Bank after an enquiry, and after finding that the petitioner has not committed any acts of misconduct, by its letter dated 15-2-1989 has accepted the resignation of the petitioner retrospectively i.e., with effect from 6-3-1987. In my view, the respondent-Bank could not have accepted the resignation of the petitioner with retrospective effect for the reason that it is now well-settled legal position that unless employee is relieved of the duty after acceptance of voluntary retirement or resignation, jural relation of the employee and the employer does not come to an end. The officer/employee in the present case was not relieved either on 6-3-1987 or on a subsequent date. Since the order accepting voluntary resignation was conditional one in the sense that it would come into effect only at the end of 6-3-1987, the Bank could definitely keep the said order in abeyance and that was what the respondent-Bank did by their letter dated 4-3-1987. Consequently, the order accepting voluntary resignation did not become effective, thereby vested right is created in favour of the petitioner. By virtue of that letter, petitioner continued to be officer/employee and the respondents after completion of the purpose for which the earlier letter of acceptance of resignation was kept in abeyance could not have accepted the resignation retrospectively i.e., with effect from 6-3-1987, by their letter dated 15-2-1989. In view of this petitioner is deemed to have continued in service till 15-2-1989. Now the question for consideration is whether the petitioner would be entitled for salary during this period. In the normal course, the respondents could not have denied the salary and allowance to the petitioner for this period and if it was denied by the respondents for some reason or the other, this Court would have been justified in issuing a positive direction to the respondent-Bank to settle the claim of the petitioner for the salary and other allowances for the said period, but in view of peculiar fact situation in the instant case, even though this Court has

come to the conclusion that respondent-Bank could not have accepted the request of the petitioner for voluntary resignation with a retrospective date, the petitioner is not entitled for the salary and other allowances for the interregnum period. In support of this conclusion, I intend to rely upon the observations made by Supreme Court in the case of Paluru Ramakrishnaiah and Others v Union of India. In the said decision, the Supreme Court was pleased to observe 'no pay for no work' and this principle was reiterated in the subsequent decision in the case of State of Haryana and Others v O.P. Gupta, wherein, their Lordships after noticing the view of the Apex Court in Union of India v K.V. Janakiraman, was pleased to hold that 'persons who get notional promotion from back date without having actually worked on that post not entitled to claim arrears of pay from the date of notional promotion'.

9. In the present case, petitioner by his letter dated 16-3-1987 informs the respondent-Bank that in view of their earlier correspondence, he is deemed to be relieved with effect from 5-3-1987 and thereafter does not choose to work in the Bank in the post held by him voluntarily and wilfully. Resignation is only an offer to put an end to the relationship between the employer and the employee. Resignation would come into effect when it is accepted by a competent authority. In the instant case, no doubt the Bank by its letter dated 7-1-1987 had accepted the resignation of the petitioner from service with effect from 6-3-1987 and before that date, that order was kept in abeyance in contemplation of departmental enquiry proceedings. Even before this resignation could come into effect, petitioner on his own volition unilaterally abandons the post and service after putting his resignation and does not even subject himself to the administrative control of the appointing authority and stays away from the duty. It is not the case of the petitioner that he was prevented by the respondent-Bank authorities from functioning in the post held by him awaiting acceptance of resignation. In my view, there is no good reason to order back wages to the petitioner for the period during which he did not actually work.

10. For the reasons stated, petition is allowed in part. That portion of the impugned order accepting the resignation of the petitioner voluntarily with retrospective date is set aside. It is declared that the resignation of the petitioner would come into

effect from the date of order namely with effect from 15-2-1989. Further, it is declared that the petitioner is not entitled for salary and other allowances for the periods 6-3-1987 till 15-2-1989. In the facts and circumstances of the case, parties are directed to bear their own costs.

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