[2023] 15 S.C.R. 893 : 2023 INSC 1077

U.P. SINGH
v.
PUNJAB NATIONAL BANK

(Civil Appeal No. 5494 of 2013)

DECEMBER 14, 2023

[HIMA KOHLI AND RAJESH BINDAL*, JJ.]

Issue for consideration:

High Court whether justified in reversing the award of the Tribunal whereby it had accepted the prayer of the workman and the order deeming that he had voluntarily retired was set aside.

Labour Laws – Workman was appointed as Clerk-cum-Cashier with the respondent-Bank – Initially, he was working at Barabanki, thereafter, transferred to Zaidpur, Barabanki and then to Shahjanhanpur – Suspended on account of disorderly behaviour – On enquiry, was found guilty and awarded punishment of stoppage of two graded increments with cumulative effect vide order dtd.28.09.1983 – Vide the same order, he was advised to report for duty to the Manager, Branch Office, Bhagwantnagar, Unnao – Failed to join duty – Order passed wherein he was deemed to have voluntarily retired from service – Six years later, he raised dispute about his deemed retirement – Dispute referred to the Tribunal which held in favour of the workman – Award of the Tribunal reversed by Single Judge – Said order upheld by the Division Bench:

Held: A person aggrieved by the order of transfer cannot sit at home and decide on his own that the order is illegal or erroneous and he will not comply with the same – If the workman had any grievance, he could have availed of his remedy available against the same; otherwise, he was duty-bound to comply with the same – Failure to avail of any remedy also would mean that he had accepted the order and was duty-bound to comply with the same – At a later stage, he could not take a plea that the order being erroneous, no consequence would follow for its non-compliance – Workman never challenged the order of punishment or his transfer before the competent authority or the Court and the said

* Author

order became final – He was only aggrieved with his posting to the Branch Office, Bhagwantnagar, Unnao – Instead of joining his new place of posting, he continued writing letters – Further, it is undisputed that in the year 1985 the workman got himself enrolled as an Advocate with the Bar Council of Uttar Pradesh and is in active practice – Being legally trained, he was trying to drag the Bank into avoidable litigation instead of complying with the orders – As per the direction of the Bank, he was given time upto 06.02.1984 for reporting for duty – It is evident from the communication dated 01.02.1984 addressed by the workman to the Bank that he was in the knowledge of all the developments and being a Law Graduate, he very well knew the consequences of failure to challenge an order and not complying with the same – He would also be aware of the Bipartite Agreement and the consequences mentioned therein of his absence from duty – His idea seemed to be to remain in practice of law and at the same time enjoy payment of subsistence allowance without working – Even after gaining knowledge of his deemed voluntary retirement in 1984, he kept quiet for a period of six years before raising a dispute in 1990 – No error in the order passed by the High Court. [Paras 8-11, 15]

Labour Laws – Suspension – Relationship of master and servant – Plea of the workman that being on suspension, he could not have been treated to have been voluntarily retired as per the deeming provision:

Held: Said plea is rejected, as during his suspension also, the relationship of master and servant does not come to an end – All the rules and regulations governing the post continue to apply – Merely because the Bank had stopped paying subsistence allowance to the workman does not mean that the workman was no more an employee of the Bank – The action was taken by the Bank only to ensure that somehow or the other, the workman joined his duty – However, it seems that he had some other scheme in his mind – The idea seems to be to lay a claim on all his wages – Initially, to get subsistence allowance without working and then claim reinstatement and back wages – If Clause XVI in the Bipartite Agreement is seen, the workman could have been treated to have been voluntarily retired immediately upon expiry of 90 days from 28.09.1983 as

he had failed to join duty – Letter dtd.05.01.1984 issued by the Bank was duly acknowledged by him in his communication but still he failed to join duty and continued writing letters – Despite this fact, the Bank was magnanimous enough to have issued a final notice to him on 05.10.1984, granting him 30 days' time to report for duty, as also acknowledged by the workman – But he failed to comply with the same. [Para 16]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5494 of 2013.

From the Judgment and Order dated 10.02.2011 of the High Court of Delhi at New Delhi in LPA No. 481 of 2010.

Petitioner-in-person.

Rajesh Kumar Gautam, Anant Gautam, Samir Mudgil, Sumit Sharma, Ms. Anani Achumi, Dinesh Sharma, Ms. Shivani Sagar, Advs. for the Respondent.

The Judgment of the Court was delivered by

RAJESH BINDAL, J.

1. The workman is before this Court impugning the order[1] passed by the Division Bench of the High Court[2] in an intra court appeal[3], whereby the order[4] passed by the learned Single Judge in the Writ Petition[5] was upheld.

2. The learned Single Judge of the High Court had set aside the award[6] of the Tribunal[7]. Vide the aforesaid award, the prayer of the workman was accepted, and order dated 05.12.1984 deeming that the workman had voluntarily retired, was set aside. He was directed to be reinstated with full back wages along with interest and consequential benefits.

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1 Order dated 10.02.2011.
2 High Court of Delhi
3 Letters Patent Appeal No. 481 of 2010
4 Order dated 26.02.2010.
5 Writ Petition No. 7834 of 2003
6 Award dated 27.08.2003.
7 Central Government Industrial Tribunal-cum-Labour court

3. The brief facts of the case, as are available on record, are that the workman was appointed with the Bank[8] on 20.06.1977 as Clerk-cum-Cashier. Initially, he was working at Barabanki. Thereafter, he was transferred to Zaidpur, Barabanki and then to Shahjanhanpur in August 1978. On 14.06.1982, he was suspended on account of his disorderly behaviour. On enquiry, the workman was found guilty of the charges and awarded punishment of stoppage of two graded increments with cumulative effect vide order dated 28.09.1983. Vide the same order, he was advised to report for duty to the Manager, Branch Office, Bhagwantnagar, Unnao. The workman failed to join duty. In terms of Clause XVI[9] of the Bipartite Agreement[10] between Indian Banks' Association and Workmen Unions, vide order dated 05.12.1984, the workman was deemed to have voluntarily retired from service. Aggrieved by the aforesaid action of the Bank, six years later, the workman raised a dispute about his deemed retirement before the Assistant Labour Commissioner. On 15.11.1991, the dispute was referred to the Tribunal for adjudication. The question referred was answered by the Tribunal in favour of the workman. However, the learned Single Judge reversed the award of the Tribunal and the Division Bench upheld the order passed by the learned Single Judge.

4. The workman, even as per the material available on record, has joined active practice as a lawyer after his deemed voluntary retirement from service with the Bank, has appeared in person and argued before this Court. Even the Tribunal had recorded that the workman had appeared himself in person and had addressed arguments.

5. The workman, who appeared in person, submitted that the Disciplinary Authority, while passing the order of punishment after enquiry, could not have ordered his transfer in the same order as the competence to order transfer of the workman lied with a different authority. The workman had been raising that issue before the authority, however, the same was not addressed and in an illegal manner, he was deemed to have voluntarily retired. He was

8 Punjab National Bank
9 Clause XVI- Voluntary Cessation of Employment by the Employees
10 Fourth Bipartite Agreement dated 17.09.1984.

not given joining time also. He made number of representations to revoke his suspension to enable him to join the place of posting after his reinstatement. He had even gone on hunger strike but none of the authorities redressed his grievance. He was not even paid subsistence allowance for the period he was under suspension. After passing of the punishment order in the enquiry initiated against him, he could not be continued on suspension as the order dated 28.09.1983 stated that he shall be deemed to be reinstated only on joining at the new place of posting. He sought to explain his reasons for not complying with the order of transfer by explaining that the Branch Office, Bhagwantnagar, Unnao, was at a distance of 350 kilometers. There was non-payment of allowances including subsistence allowance for the previous period, and if he was stated to be under suspension, he could not have been transferred as the transfer was possible only after his reinstatement.

6. On the other hand, learned counsel for the Bank submitted that seeing the conduct of the workman, who had been misbehaving with his senior officers and was also in the habit of not complying with the orders of the authorities, he was imposed a very light punishment of stoppage of two graded increments, otherwise the notice issued to him after enquiry was to show cause as to why he should not be dismissed from service. There is no place for any indisciplined person in any institution, especially in a Bank where entire business depends upon the dealing of the staff with its customers. Even after the punishment was imposed upon him and to avoid any further untoward incident, seeing his past conduct, the workman was directed to report for duty at a different branch. However, the workman did not comply with that order and continued raising the dispute with the Bank at different levels. He further mis-conducted himself by sitting on a hunger strike. This aggravated the issue and shows the attitude of the workman who was not fit to be retained in service. It was contended that there is no error in the orders passed by the High Court setting aside the award of the Tribunal and the workman does not deserve any relief.

7. We have heard the workman, who appeared in-person and the learned counsel for the Bank and perused the relevant referred record.

8. A fact which is not in dispute and has been specifically recorded by the learned Single Judge of the High Court in his order is that in the year 1985 the workman got himself enrolled as an Advocate with the Bar Council of Uttar Pradesh. It was admitted by him that he had been handling cases of the Union and other employees of the Bank.

9. It is a fact that the workman was awarded the punishment of stoppage of two graded increments vide order dated 28.09.1983. In the same order, the workman was directed to report for duty to the Manager, Branch Office, Bhagwantnagar, Unnao (U.P.). The fact which remains undisputed is that the workman never challenged the order of punishment or his transfer before the competent authority or the Court and the said order became final. He was only aggrieved with his posting to the Branch Office, Bhagwantnagar, Unnao. Instead of joining his new place of posting, he continued writing letters. In terms of Clause XVI of the Bipartite Agreement, in case a workman absents from work consecutively for 90 days or more, without submitting any application for leave, the Bank is entitled, after 30 days' notice, to conclude that the employee has no intention to join duty and is deemed to have voluntarily retired on expiry of the notice period of 30 days. The relevant Clause is extracted below:

"Clause XVI- Voluntary Cessation of Employment by the Employees

Where an employee has not submitted any application for leave and absents himself from work for period of 90 days or more consecutive days without or beyond any leave to his credit or absents himself for 90 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended or where there is satisfactory evidence that he has taken up employment in India or the management is satisfied that he has no present intention of joining duties, the management may at any time thereafter give a notice to the employee last known address calling upon the employee to report for duty within 30 days of the notice stating inter alia, the grounds for the management coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, wherever available. Unless the employee reports for duty within 30 days or unless he gives an explanation for his absence satisfying the management that he has not taken up another employment for avocation and that he has no intention of not joining duties, the

employee will be deemed to have voluntarily retired from the Bank's service on the expiry of the said notice. In the event of employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the banks right to take any action under law or rules of service."

10. A person aggrieved by the order of transfer cannot sit at home and decide on his own that the order is illegal or erroneous and he will not comply with the same. If the workman had any grievance, he could have availed of his remedy available against the same; otherwise, he was duty-bound to comply with the same. Failure to avail of any remedy also would mean that he had accepted the order and was duty-bound to comply with the same. At a later stage, he could not take a plea that the order being erroneous, no consequence would follow for its non-compliance.

11. On 20.12.1983, a letter was issued to the workman reminding him that despite his transfer to the Branch Office, Bhagwantnagar, Unnao, he had not yet reported for duty. He was given ten days' time to report for duty or latest by 05.01.1984. It was stated that otherwise, it shall be presumed that he was absenting unauthorisedly and disciplinary action would be taken against him in terms of the Bipartite Agreement. This was followed by another letter dated 05.01.1984. The workman was given ten days' time to join the duty from the date of receipt of the letter or latest by 20.01.1984, whichever was earlier. Further, the intention of the workman was quite evident from the subsequent events which remained undisputed, namely, that he intended to join legal practice which he did, as admittedly in the year 1985, he got himself enrolled as an Advocate and is in active practice. The communication dated 30.01.1984 from the Bank to the workman shows that the workman had personally submitted a letter dated 24.01.1984 to the Regional Manager, Lucknow Region of the Bank. As per the direction of the Bank, the workman was given time upto 06.02.1984 for reporting for duty. It is evident from the communication dated 01.02.1984 addressed by the workman to the Bank that he was in the knowledge of all the developments and further, being a Law Graduate, he very well knew the consequences of failure to challenge an order and not complying with the same. He would also be aware of the Bipartite Agreement and the consequences mentioned therein of his absence from duty. In the aforesaid letter,

the workman had mentioned that from January 1984, his subsistence allowance had not been paid resulting in mental torture to him. His idea seemed to be to remain in practice of law and at the same time enjoy payment of subsistence allowance without working. The language of the letter also clearly suggests that the workman was legally trained.

12. His over-smartness is evident further from the contents of his letter where he claimed that as a consequence of non-payment of subsistence allowance, he had to pass his life on open road and his address for communication had been lost, thus making sure that he could take a plea that none of the communications from the Bank were received by him. In his subsequent letter dated 08.02.1984, in response to letters from the Bank dated 05.01.1984, 09.01.1984 and 30.01.1984, he again raised the issue regarding non-payment of his subsistence allowance but did not mention his address. He stated that he could not be compelled to report for duty at the Branch Office, Bhagwantnagar, Unnao. The aforesaid communication from the workman clearly establishes the fact that he was in the know of the letters issued by the Bank to him regarding his voluntary absence from duty for over 90 days. He was directed to report for duty to the Manager, Branch Office, Bhagwantnagar, Unnao vide order dated 28.09.1983, but instead of submitting his joining, he continued corresponding with the Bank.

13. The conduct of the workman is further evident from the communication dated 06.03.1984, addressed by him to the Chairman of the Bank informing that he had gone on hunger strike from 06.03.1984 onwards on account of non-redressal of his grievances. Yet, he was smart enough not to furnish his address in the said letter. Though the period of 90 days had already expired after 28.09.1983 and the workman was absenting from duty without any application despite repeated notices served upon him, still a notice was sent by the Bank to the workman at his last known two addresses on 05.10.1984 referring to Clause XVI of the Bipartite Agreement specifically stating that in case of his failure to join duty within 30 days, he shall be deemed to have voluntarily retired from service.

14. Notice was also published in Lucknow and Allahabad Editions of North India Patrika on 08.10.1984. This was done as an abundant caution as the workman had not been furnishing his address in

any of his communication though had been corresponding with the Bank. He was well aware of the communications sent by the Bank even after the aforesaid notice was issued to him. He sent another letter to the Bank on 17.10.1984, claiming payment of subsistence allowance from January 1984 onwards. He sent yet another letter dated 18.10.1984 to the Branch Manager, Shahjahanpur informing that in case any communication is received in his name from any other office, the same may be served upon him but strangely enough he did not mention at what address.

15. In his subsequent communication dated 20.10.1984, again the workman claimed bonus but still did not furnish any address. Same was the position in his subsequent communications also which we do not wish to expound upon in this order as the sum and substance of the same is that instead of complying with the order directing him to join duty at the Branch Office, Bhagwantnagar, Unnao, the workman continued a running correspondence with the Bank. In these circumstances, it is apparent that the workman, who was legally trained, was trying to drag the Bank into avoidable litigation instead of complying with the orders. The Bank, vide order dated 05.12.1984, considering his conduct, had treated him to have voluntarily retired from service with immediate effect. The aforesaid order was sent at the last two known addresses of the workman. Though the workman was claiming that he does not have any address for correspondence, but immediately after the order dated 05.12.1984 was passed, he wrote a letter dated 07.12.1984 to the Bank giving reference of the aforesaid order directing his deemed voluntary retirement. He claimed that he got knowledge of the aforesaid order from a Union leader when he visited Lucknow on 05.12.1984. Even after gaining knowledge of his deemed voluntary retirement on 07.12.1984, the workman kept quiet for a period of six years before raising a dispute before the Assistant Labour Commissioner on 28.08.1990.

16. The aforesaid conduct of the workman itself was sufficient to non-suit him as has rightly been done. His argument that being on suspension, he could not have been treated to have been voluntarily retired as per the deeming provision, is merely to be noticed and rejected, as during his suspension also, the relationship of master and servant does not come to an end. All the rules and regulations governing the post continue to apply. Merely because the Bank had stopped

paying subsistence allowance to the workman does not mean that the workman was no more an employee of the Bank. The action was taken by the Bank only to ensure that somehow or the other, the workman joined his duty. However, it seems that he had some other scheme in his mind. The idea seems to be to lay a claim on all his wages. Initially, to get subsistence allowance without working and then claim reinstatement and back wages. If Clause XVI in the Bipartite Agreement is seen, the workman could have been treated to have been voluntarily retired immediately upon expiry of 90 days from 28.09.1983 as he had failed to join duty. Letter dated 05.01.1984 issued by the Bank was duly acknowledged by him in his communication but still he failed to join duty and continued writing letters. Despite this fact, the Bank was magnanimous enough to have issued a final notice to the workman on 05.10.1984, granting him 30 days' time to report for duty. This is also acknowledged by the workman. But for reasons best known to him he failed to comply with the same.

17. For the aforesaid reasons, we do not find any error with the order passed by the High Court. The same is upheld.

18. The appeal is accordingly dismissed.

Headnotes prepared by: Divya Pandey

Result of the case:
Appeal dismissed.