

CASE NO.:
Appeal (civil) 3676 of 2006

PETITIONER:
GENERAL MANAGER, VIJAYA BANK & ANR.

RESPONDENT:
PRAMOD KUMAR GUPTA

DATE OF JUDGMENT: 24/08/2006

BENCH:
Dr. AR. LAKSHMANAN & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T
(Arising out of SLP(C) No.10809 of 2005)

Dr. AR. LAKSHMANAN, J.

Leave granted.

Heard Mr.K.T.S.Tulsi, learned senior counsel appearing on behalf of the appellants and Dr.R.G.Padia, learned senior counsel appearing on behalf of the respondent.

The appellant before us is the General Manager of Vijaya Bank. The respondent was employed in the bank as a clerk. According to the bank, he abstained from duty without any leave application on 12.09.1991. On 13.05.1992, the bank issued notice directing him to report for duty in 30 days time. On 11.06.1992, the respondent reported back to duty. Within ten days, i.e., on 21.06.1992, the respondent again abstained from duty without any prior intimation. On 08.09.1992, the bank issued second notice to the respondent. A copy of the said notice was also pasted on the notice board. The said notice dt.08.09.1992 was received by the respondent on 14.09.1992. According to the respondent, when he reports for duty on 12.10.1992, he was not permitted by the bank since he has not joined duty on 08.10.1992, i.e., within 30 days from 08.09.1992. The respondent after four years raised a dispute on 01.04.1996. He protested against the termination. Thereafter, the matter was referred to the Industrial Tribunal. The Tribunal in para 12 of its order has held as under :-

"The record shows that the concerned workman remained absent from duty without taking leave and without submitting any application for leave from 12.11.91 to 10.6.92 and from 21.6.92 till the cessation of his employment according to the provisions of law. Even after cessation of his employment in terms of notice dated 8.9.92, he did not approach higher authorities of the bank for taking him in the services of the bank. The record shows that he for the first time moved an application to the General Manager of the bank on 1.4.96 without approaching the higher authorities against the order treating him to have retired from the service which was passed by the General Manager of the Bank on 28.11.92. This shows that the concerned workman was gainfully employed some where and was earning money from other sources and that is why he kept mum for four years without approaching higher authorities for getting job again in the bank. Sri Hedge M.M.1 clearly stated on oath that the brother of the concerned workman was carrying a business of share broker in a shop in front of Jeoni Mandi Branch of the bank at Agra and the concerned workman also doing the same business and profession with his brother and that is why he was not interested in joining the services of the bank. His evidence on this point goes uncontroverted. The concerned workman did not suggest to him that he was not carrying on profession of share broker and the shop of his brother was not in front of the branch of the bank in which he was carrying on business of share broker.

The evidence of M.W.1 on this point appears to be correct and it supports the contention of the management that the concerned workman was gainfully employed in other profession and business and that is why he had no intention to join duties in the bank and remained absent for several months without moving any application for leave and kept mum for four years even after cessation of his employment. In these circumstances, the case of the management appears to be correct that the concerned workman was gainfully employed in other trade or business and had no intention to join duties of the bank, and the decision of the bank that he had relinquished and abandoned the service of the bank appears to be fully justified."

In view of the above finding, the Tribunal held that there is no illegality on the part of the bank in taking action against the respondent-workman. The Tribunal further held that the action of the Management in treating the concerned workman to have voluntarily retired from service of the bank with effect from 08.10.1992 was wholly justified and lawful. The reference was answered by the Tribunal accordingly.

Aggrieved against the order passed by the Tribunal, the respondent filed a Writ Petition No.24370/2001 in the High Court of Allahabad. The said petition was allowed on 18.03.2005.

We have carefully perused the order passed by the High Court. A perusal of the order passed by the High Court would show that the High Court has not considered the question as to whether the respondent was gainfully employed or not during the relevant period in question. The High Court has also not adverted to the categorical finding recorded by the Tribunal on this aspect. The High Court directed the appellant bank to reinstate the respondent on the post held by him with continuity in service and that the respondent shall also be entitled to other consequential benefits to which he is entitled to in accordance with law. The High Court, in our opinion, without considering the relevant issue has ordered full back wages with all other consequential benefits which, in our opinion, is not correct. It is argued by Mr.K.T.S. Tulsi, learned senior counsel for the appellants that the respondent-workman has not discharged his burden by adducing any evidence that he was not gainfully employed. He has also now shown any acceptable material that he was not gainfully employed and, under these circumstances, ordering full back wages to the respondent by the High Court without considering the merits of the claim by the bank is not correct and that the approach made by the High Court in ordering full back wages cannot, at all, be countenanced in the facts and circumstances of this case.

The argument advanced by learned senior counsel for the appellants is opposed by the learned senior counsel for the respondent-workman. According to the learned senior counsel for the respondent, even though the respondent had reported for duty to the bank he was not allowed to join duty and, therefore, he cannot be penalised for the mistake committed by the bank in not permitting the respondent to join the duty. He also submitted that the procedure to deal with unauthorised absence of staff members has not been followed viz. the Bipartite Settlement and codified Circular No.101 of 1993.

Dr.R.G.Padia further submitted that the notice dated 08.09.1992 called upon the respondent to report for duty within 30 days from the date of publication of this notice and not 30 days from the date of issue as wrongly stated in the order of termination. The respondent had reported for duty on 12.10.1992 which is well within 30 days of the date of service of notice. Further it is settled position in law that an order shall not be effective unless it is published and communicated to the officer concerned. We see much force in this contention.

In our opinion, the period of 30 days has to be reckoned only from the date of service of the notice namely, on 14.9.1992. If that date is taken into consideration, the respondent has joined the duty well within 30 days namely, on 12.10.1992.

Dr.Padia further submitted that the Tribunal was wrongly persuaded by the oral testimony of the witness of the bank which lacked any basis in the pleadings or prove any form of document. According to him, the respondent was not gainfully employed and that the said finding is totally perverse. It is

submitted that the bank only prevented the respondent from joining duty and that the respondent is not at fault and, therefore, he is entitled to full back wages.

We, therefore, remit the matter to the High Court to consider the question of payment of back wages for the period in question. We request the High Court to consider the matter afresh on the question of back wages only. The appellant bank is also free to hold any departmental enquiry against the respondent-workman for his absence from duty during the relevant period. Since the matter is remitted to the High Court on the question of back wages only, the respondent will not be entitled for payment of any back wages during the period in question which will depend upon the ultimate order that may be passed by the High Court. The order passed by the High Court ordering reinstatement shall stand.

It is stated by Dr.R.G.Padia, learned senior counsel that the respondent has availed some loan from the bank for the purpose of purchasing a residential house. It is also stated that he has committed default in payment of instalments of the said loan to the bank. Since the matter is remitted back to the High Court, he requested this Court to direct the bank not to sell the residential house for non-payment of the instalments of the loan availed by him for the purpose of residential house till the High Court takes final decision. The request is accepted. It is ordered accordingly.

The appeal is accordingly allowed in part as indicated above. No costs.