

CASE NO.:
Appeal (civil) 12795 1996

PETITIONER:
PUNJAB & SIND BANK & ORS.

Vs.

RESPONDENT:
SAKATTAR SINGH

DATE OF JUDGMENT: 29/11/2000

BENCH:
D.P.Mohapatro, S.N.Phukkan

JUDGMENT:

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J U D G M E N T

RAJENDRA BABU, J. :

The respondent challenged the order of termination effected by means of striking out his name from the muster roll of the appellant-Bank by a writ petition filed in the High Court of Punjab & Haryana. The respondent had joined the service of the appellant-Bank at Gwalior on 18.04.1978 as Apprentice and was regularly appointed as Clerk-cum-Cashier with effect from 18.12.1978. He claimed that on account of very serious eye ailment he had been taking leave often and on and he had such ailment even in the year 1993-94 and after obtaining a fitness certificate from a doctor he submitted his joining report to the Branch Manager on 04.04.1994 which was not accepted by him and, therefore, he submitted an application to the higher authorities of the Bank. In the meanwhile, however, by a notice dated 12.03.1994 the respondent was asked to explain his unauthorised absence after the expiry of sanctioned leave. The respondent, however, claimed to have appeared before the competent authority to permit him to join duty but no order was passed. On the other hand, an order dated 18.04.1994 came to be passed informing him of the termination of his services in the manner stated earlier. In answer to the writ petition filed the appellants justified their action by stating that the respondent after proceeding on leave for three days commencing on 16.08.1993 did not report for duty although communications dated September 4, 1993, December 17, 1993 and April 15, 1994 were sent to him and he was called upon to resume his duty. The appellants pleaded that the respondent had remained unauthorisedly absent for a period of 190 days and, therefore, made himself liable to be removed from the rolls of the Bank in terms of Para 17 of the Bipartite Settlement and Para 522 of the Sastri Award. The High Court took the view that the respondent had put in 16 years of service and his services could not have been dispensed with except after

inquiry consistent with the principles of natural justice and the appellants action in terminating the services of the respondent is based on a mis-conduct in respect of which no inquiry has been held though it was imperative for the appellants to have served a charge-sheet to him with an opportunity to file his reply, to appoint an Inquiry Officer, to permit the respondent to adduce evidence in support of the allegations of mis-conduct and to give opportunity to him to refute such evidence. The High Court relied upon certain decisions of this Court. The High Court, therefore, declared that the order striking out the name of the respondent from the rolls of the Bank is a nullity due to the patent violation of the principles of natural justice and the appellants order also suffered from many defects such as non-application of mind to the matter. For the aforesaid reasons, the High Court quashed the orders made on 18.04.1994 and 12.09.1994, however, making it clear that it was open to the appellants to take action in accordance with the provisions of law and the principles of natural justice. As regards wages the High Court directed that appropriate application could be made to the appellants under the Industrial Disputes Act, 1947. Hence this appeal.

Shri P.P. Rao, the learned Senior Advocate appearing for the appellants, submitted that under clause XVI of IV Bipartite Settlement the appellants may put to an end to the services of the respondent even without an inquiry and this clause had come up for consideration before this Court in *Syndicate Bank v. General Secretary, Syndicate Bank Staff Association & Anr.*, 2000 (5) SCC 65, when on a similar charge a bank employee unauthorisedly absented himself from work for a period exceeding the prescribed limit of 90 days and the bank having served a notice upon him requiring to submit his explanation to join work within the prescribed period of 30 days as otherwise he would be deemed to have retired, was held to be good and such action is not violative of principles of natural justice and, therefore, he submitted that the view taken by the High Court is not justified. The learned counsel for the respondent, while supporting the view taken by the High Court, submitted that a workman should know the nature of the complaint or the accusation against him and should have opportunity to put forth his case in the absence of which there cannot be any fair or just decision on the matter. Even *Syndicate Bank case (supra)*, he submitted, was decided on the facts of that case and there is no similarity between two matters and hence he submitted that this appeal deserved to be dismissed. A reading of clause XVI of IV Bipartite Settlement will make it clear that in the event an employee absents himself from duty for 90 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended the Management may, at any time thereafter, give a notice to the employee at the last known address calling upon him to report for duty within 30 days of notice stating, inter alia, the grounds for the Management coming to the conclusion that the employee has no intention of joining duty and furnishing necessary evidence wherever relevant and unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence satisfying the Management that he has not taken up another employment or avocation and he has no intention of not joining the duty, the employee will be deemed to have voluntarily retired from the banks service on the expiry of the time fixed in the said notice. In the event of the employee giving a satisfactory reply, he will be permitted to report for duty thereafter within 30 days from the expiry

of the aforesaid notice without prejudice to the banks right to take any action under the law or rules of service. Under this Rule the employee is given an opportunity to rejoin duty within a stipulated time or explain his position to the satisfaction of the Management that he has no intention of not joining duty, and a presumption will be drawn that the employee does not require the job any more and will stand retired from service. Thus, there is no punishment for mis- conduct but only to notice the realities of the situation resulting from long absence of an employee from work with no satisfactory explanation thereto. The principles of natural justice cannot be examined in vacuum without reference to the fact-situation arising in the case. This Rule has been incorporated in an agreement where representatives of employees unions were party. They also realised the futility of continuing a situation when an employee without appropriate intimation to the management is playing truant. If the respondent had submitted an explanation regarding his unauthorised absence or placed any material before the court that he did report for duty but was not allowed to join duty, inquiry may have been necessitated but not otherwise. In this case, the employee-respondent had defaulted in not offering any explanation regarding his unauthorised absence from duty nor did he place any material to show that he reported for duty within 30 days of notice as required by clause XVI of IV Bipartite Settlement. Thus we think that the contention put forward on behalf of the respondent that he was suffering from serious eye ailment at the relevant time is difficult of acceptance. In the writ petition filed before the High Court the respondent had stated that in the year 1980 he had a serious eye ailment and he had been taking leave from the bank often and on and he had taken leave from 16.08.1993 to 18.08.1993 to attend some urgent work which was duly sanctioned but he was struck by eye ailment and, therefore, he could not join his duty as is clear from the medical certificate issued to him. In reply thereto the stand taken by the appellants is that the record of the respondent does not disclose that he had proceeded on leave on medical advice for an eye ailment at any time. Even in the present leave application submitted by him he had stated that he was proceeding on leave to attend some urgent work at Chandigarh while the medical certificate produced before the court shows that the same had been issued by a doctor at Amritsar. There is dispute as to when he made available this material. The stand of the appellants is that this material was also produced only after the order of termination had been made and in seeking a review of the said order. The respondent claimed that he had sent several communications regarding his illness or to extend his leave or to rejoin duty but there does not appear to be any record with the bank nor the respondent is in a position to produce any proof of his having sent such letters. We do not also find any material on record to show that he had reported for duty within the period indicated in the notice issued in terms of clause XVI of IV Bipartite Settlement. In the circumstances, we find the High Court had proceeded on an erroneous basis of non-compliance with the principles of natural justice, whereas the true content of the principles of natural justice should have been borne in mind, particularly when there was an agreement between the parties as to the manner in which the situation should be dealt with and the consequence that would ensue thereof.

In the circumstances, we allow this appeal, set aside

the order made by the High Court and dismiss the writ petition filed by the respondent. However, in the circumstances of the case, the parties are directed to bear their respective costs.

..J. [S. RAJENDRA BABU]

JUDIS