

GENERAL MANAGER, VIJAYA BANK AND ANR.

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v.

PRAMOD KUMAR GUPTA

AUGUST 24, 2006

[DR. AR. LAKSHMANAN AND TARUN CHATTERJEE, JJ.]

B

Labour Laws:

Industrial Disputes Act, 1947:

C

Workman unauthorisedly abstained from duty—Notice—He did not report for duty within 30 days from the issuance of notice—Employer ordering his voluntary retirement from service—Industrial dispute—Tribunal held action of the employer in retiring him from service justified—High Court directing the employer to reinstate him with back wages—On appeal, Held: Since the notice period of 30 days has to be reckoned only from the date of service of the notice, the workman had joined the duty well within the permissible time limit—Hence, the order passed by the High Court ordering his reinstatement shall stand—However, High Court while directing reinstatement of the workman with full back wages and consequential benefits did not examine the question as to whether the workman was gainfully employed or not during the relevant period—Hence, the matter is remitted to High Court to examine the question of payment of back wages afresh.

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The appellant is the General Manager of a Bank wherein the respondent was employed as clerk. The respondent-workman abstained from duty without any leave application. The bank issued notice directing him to report for duty within 30 days. The respondent reported back to duty within ten days. He again abstained from duty without any prior intimation. The bank issued second notice to him, which was received by him on 14.09.1992. When he reported for duty on 12.10.1992, he was not allowed to join the duty and he was ordered to be retired from the service. The respondent raised an industrial dispute. The matter was referred to an Industrial Tribunal. The Tribunal held that the action of the Management in retiring him from service was wholly justified and lawful. Aggrieved, the respondent filed a Writ Petition in the High Court, which was allowed by the High Court. Hence the present appeal.

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A The appellant-bank contended that the respondent-workman has not discharged his burden by adducing any evidence to show that he was not gainfully employed since his retirement from service; and that the High Court erred in ordering full back wages to him in the facts and circumstances of the case.

B The respondent submitted that he had reported for duty within the notice period but he was not allowed to join duty and, therefore, he cannot be penalised for the mistake committed by the employer in not permitting him to join the duty; that the procedure to deal with unauthorised absence of staff members has not been followed by the appellant-bank; that the notice calling upon the respondent to report for duty within 30 days from the *date of publication of the notice* and not 30 days from the *date of its issuance* as wrongly stated in the order of termination; that it is settled position in law that an order shall not be effective unless it is published and communicated to the officer concerned; that the respondent was not gainfully employed since his retirement from the service; and that since **D** the bank had prevented him from joining duty though he was not at fault, he is entitled to full back wages.

Partly allowing the appeal, the Court

E HELD: 1.1. 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. [373-B]

F 1.2. The High Court without considering the relevant issue has ordered the appellant-bank to reinstate the respondent-workman on the post held by him with full back wages with all other consequential benefits, which is not correct. [373-C]

G 1.3. The period of 30 days has to be reckoned only from the date of service of the notice. If that date is taken into consideration, the respondent has joined the duty well within 30 days. [374-A]

H 1.4. The matter is remitted to the High Court to consider the question of payment of back wages for the period in question afresh. The appellant bank is 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 shall 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. However, the order passed by the High Court ordering reinstatement shall stand. [374-D-E-F] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3676 of 2006. B

From the Judgment/Order dated 18.3.2005 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 24370/2001.

K.T.S. Tulsi, Subramonim Prasad, Gopalakrishnan R. and Mrinmayee Sahu for the Appellants. C

R.G. Padia, Navin Chawla and Vikram Singh for the Respondent.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. Leave granted. D

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. E

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 :- F G

“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 H

A 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 11.4.96
without approaching the higher authorities against the order treating
him to have retired from the service which was passed by the General
Manger of the Bank on 28.11.92. This shows that the concerned
workman was gainfully employed somewhere 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.”

G 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.

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Aggrieved against the order passed by the Tribunal, the respondent A
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 B
Court has not considered the question as to whether the respondent was
gainfully employed or not during the relevant period in question. The High B
Court has also not adverted to the categorical finding recorded by the Tribunal
on this aspect. The High Court directed the appellants 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 C
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. Tuli, learned senior counsel for the appellants that the respondent-
workman has not discharged his burden by adducing any evidence that he D
was not gainfully employed. He has also not 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. E

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 F
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* G
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 H

A 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.

B 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.

C 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.

D 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.

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

S.K.S.

Appeal partly allowed.