

REGIONAL MANAGER, BANK OF BARODA

v.

ANITA NANDRAJOG

(Civil Appeal No. 6898 of 2004)

SEPTEMBER 1, 2009

[MARKANDEY KATJU AND ASOK KUMAR
GANGULY, JJ.]

LABOUR LAW:

Industrial Disputes Act, 1947 – Fifth Bipartite Settlement dated 10-4-1989; Clause 17(b) – Bank employee remained absent without leave for very long period – Bank invoked Cl.17(b) of Fifth Bipartite Settlement and issued notice to her to report for duty within 30 days – Employee did not report for duty – Bank terminated her service by treating her as having voluntarily retired from service – Action of Bank challenged – Held: Challenge not tenable – Behavior of employee was highly improper – No establishment can function if it allows its employees to behave in such a manner – Service Law – Misconduct.

Respondent was an accounts clerk in a bank. She remained absent without leave for very long period. Appellant-Bank invoked Cl.17(b) of Fifth Bipartite Settlement dated 10-4-1989 and issued notice to her to report for duty within 30 days. Respondent did not report for duty. Appellant-Bank terminated her service by treating her as having voluntarily retired from service. The Industrial Tribunal held that the order passed by the Bank was illegal and unjustified. The order was upheld by the High Court. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1. The management had been extremely

A lenient to the respondent by condoning her absence on
the first occasion from 4.8.1986 to 29.3.1987 that is for a
period of over seven months when she was absent
without leave, and then again from 20.7.1987 to 10.4.1988
that is for a period of about seven months. Thus the
B respondent was absent for a very long period without
leave. The bank taking a lenient view condoned the
absence without leave. However, it seems that the
respondent thought that she could do whatever she liked
and remain absent whenever she liked for whatever
C period she liked. She again sent an application dated
22.8.1988 for leave for 60 days, which was not
sanctioned. However, she remained absent without leave
and she kept sending letters for extension of leave
although she was on unauthorized absence. [Paras 9 and
D 10] [1079-C-F]

1.2. In the Bank's letter dated 26.6.1989, it is clearly
mentioned that the respondent did not have any leave
remaining to her credit and she had remained on
unauthorized leave for a period of more than 150 days
E continuously and it appeared that she has no intention
of joining duty. She was asked to report for duty within
30 days, failing which it would be deemed that she has
taken voluntarily retirement from service. In reply she
wrote a letter dated 27.7.1989 that she will be joining duty
F by the last week of August, 1989, but again she wrote
another letter dated 22.8.1989 for extension of leave till
April, 1990 on account of domestic problems. Such a
behavior on the part of an employee is clearly unfortunate
and highly improper. [Para 11] [1079-F-H; 1080-A]

G 2. Under clause 17(b) of the Fifth Bipartite Settlement
dated 10-4-1989, it is clear that if an employee is absent
without leave for more than 150 days and has no more
leave to his/her credit then the Bank can validly order
voluntary cessation of employment. Also, under clause
H

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17(b), when the management is reasonably satisfied that the employee has no intention of joining duty, it may call upon the employee to report for duty within 30 days failing which action could be taken under clause 17(b). In the present case such a notice was given by the Bank on 26.6.1989 but the respondent wanted leave till April, 1990 i.e. for another eight months. It is thus clear that she had no intention of resuming duty within 30 days. Hence the action of the Bank in terminating her service on the ground of voluntary cessation of employment was valid. [Para 12] [1080-A-D]

3. The subsequent clarification of the Fifth Bipartite Settlement in 1990 is in fact an amendment to the earlier clause 17(b) and hence will have no retrospective effect in the absence of any express intention to that effect. The termination order was passed on 25.8.1989 whereas the above clarification was made in 1990 when the service of the respondent had already come to an end. A clarification may in reality be an amendment, while an amendment may in reality be a clarification. It is not the nomenclature which matters but the real nature of the rule. The so-called clarification of January 1990 was in fact an amendment to clause 17(b) because it makes a major change to clause 17(b). Hence it has no retrospective effect. [Paras 13, 14 and 15] [1080-E-H; 1081-A-C]

4. The behaviour of the respondent remaining absent without leave for such long periods was clearly regrettable and unfortunate. No establishment can function if it allows its employees to behave in such a manner. Therefore, the order of the appellant-Bank dated 25.8.1989 terminating the service of the respondent as a voluntary cessation of her job is upheld. [Para 16] [1081-D-F]

- A *Staff Association 2000(5) SCC 65 and Punjab & Sind Bank & Ors. v. Sakattar Singh 2001(1) SCC 214, relied on.*

Case Law Reference:

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|---|------------------------|------------------|----------------|
| | 2000(5) SCC 65 | relied on | Para 16 |
| B | 2001(1) SCC 214 | relied on | Para 16 |

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- C From the Judgment & Order dated 22.9.2003 of the High Court of Judicature at Allahabad in C.W.P. No. 36619 of 1996.

Ramji Srinivasan, Pramod Gupta, Vartika Sahay and Rajesh Srivastava for the Appellant.

- D Dinesh Dwivedi, Prateek Dwivedi, Manish Shankar, Mukesh Verma, Pawan Shukla and Yash Pal Dhingra for the Respondent.

The Judgment of the Court was delivered by

- E **MARKANDEY KATJU, J.** 1. This appeal has been filed against the impugned judgment of the Allahabad High Court dated 22.9.2003 in Civil Writ Petition No.36619 of 1996.

2. Heard learned counsel for the parties and perused the record.

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23. The brief background of the case as mentioned in the writ petition, is that respondent no.2 was employed in the office of petitioner-Bank on 21.7.1980 as accounts clerk. Her husband was employed at Libya. She on two occasions i.e. from 4.8.1986 to 29.3.1987 and again from 20.7.1987 to 10.4.1988 i.e. more than 266 days, remained absent from duty, but the petitioner-Bank condoned the aforesaid acts of absence of leaving the country without permission. Respondent no.2 again left for Libya with effect from 22.8.1988 without permission and without any sanction of leave. She did not turn up to join her
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duties for more than 150 consecutive days. The petitioner-Bank invoked the provisions of Clause 17(b) of Fifth Bipartite Settlement dated 10.4.1989 and issued notice to respondent no.2 on 26.6.1989 to report for duty within 30 days, failing which it would be presumed that she has voluntarily retired from the service of the Bank. Pursuant to the said letter dated 26.6.1989, it has been alleged that respondent no.2 failed to report for duty and instead she sent two letters to the Senior Manager of the Bank at Bareilly, the first letter dated 27.7.1989 in which she stated that she would be resuming her duty in the last week of August, 1989, and the second letter dated 22.8.1989 requesting for extension of leave without pay upto April, 1990 on the ground of her domestic problems. Despite her letter dated 27.7.1989 she did not resume duty in the last week of August 1989. By means of communication dated 25.8.1989, the petitioner-Bank treated the contesting respondent as having voluntarily terminated her employment, and asked her to approach the authority concerned for claiming terminal benefits in the prescribed format.

4. Aggrieved against the same the respondent approached the Central Government, Ministry of Labour, who vide Notification under Section 10 of the Industrial Disputes Act referred the following dispute to the Labour Court for adjudication :

"Whether the action of the management of Bank of Baroda in treating Smt. Anita Nandrajog as deemed to have voluntarily retired from the services w.e.f. 25.8.1989 is legal and justified; if not what relief she is entitled to?"

5. Before the Tribunal both the parties led their respective evidence, documentary as well as oral, and thereafter the Industrial Tribunal passed an award holding the order dated 25.8.1989 passed by the Bank of Baroda as illegal and unjustified.

6. Against the award of the Tribunal the respondent before

A us filed a writ petition in the Allahabad High Court which was
dismissed by the High Court and hence this appeal by the
Bank by special leave.

B 7. The main contention on behalf of the respondent
employee before the Tribunal and High Court was that she was
not given any charge sheet nor was any inquiry held regarding
her misconduct of being absent without leave, and hence the
order dated 25.8.1989 was illegal being against the principles
of natural justice. On the other hand, the contention on behalf
C of the Bank was that no inquiry was necessary since clause
17(b) of the Fifth Bipartite Settlement dated 10.4.1989 was
being invoked.

8. Clause 17(b) of the Fifth Bipartite Settlement is as
follows :-

D "17. *Voluntary Cessation of Employment by the
Employee* The earlier provision relating to the voluntary
cessation of employment by the employee in the earlier
settlement shall stand substituted by the following :

E (a).....

F (b) When an employee goes abroad and (1) absents
himself for a period of 150 days or more consecutive days
without submitting any application for leave, or for its
extension or (2) without any leave to his credit or beyond
the period of leave sanctioned originally/subsequently or
when there is a satisfactory evidence that he has taken up
employment outside India or when the management is
reasonably satisfied that he has no intention of joining
G duties, the management may at any time thereafter give a
notice to the employee at his last known address calling
upon him to report for duty within 30 days of the date of
notice, stating, inter alia the grounds for coming to the
conclusion that the employee has no intention of joining
H duties and furnishing necessary evidence, where available.

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Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management 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 even of employee submitting a satisfactory reply, he shall be permitted to report of duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service."

9. It may be noted that the management had been extremely lenient to the respondent by condoning her absence on the first occasion from 4.8.1986 to 29.3.1987 that is for a period of over seven months when she was absent without leave, and then again from 20.7.1987 to 10.4.1988 that is for a period of about seven months. Thus the respondent was absent for a very long period without leave. The bank taking a lenient view condoned the absence without leave. However, it seems that the respondent thought that she could do whatever she liked and remain absent whenever se liked for whatever period she liked.

10. She again sent an application dated 22.8.1988 for leave for 60 days, which was not sanctioned. However, she remained absent without leave and she kept sending letters for extension of leave although she was on unauthorized absence.

11. In the Bank's letter dated 26.6.1989 copy of which is as annexure P-1 to the appeal, it is clearly mentioned in clause 4 that the respondent did not have any leave remaining to her credit and she had remained on unauthorized leave for a period of more than 150 days continuously and it appeared that she has no intention of joining duty. She was asked to report for duty within 30 days, failing which it would be deemed that she has taken voluntarily retirement from service. In reply she wrote a letter dated 27.7.1989 that she will be joining duty by the last week of August, 1989, but again she wrote another letter dated

A 22.8.1989 for extension of leave till April, 1990 on account of domestic problems. In our opinion such a behavior on the part of an employee is clearly unfortunate and highly improper.

B 12. Under clause 17(b) of the Bipartite Settlement it is clear that if an employee is absent without leave for more than 150 days and has no more leave to his/her credit then the Bank can validly order voluntary cessation of employment. Also, under clause 17(b), when the management is reasonably satisfied that the employee has no intention of joining duty, it may call upon the employee to report for duty within 30 days failing which action could be taken under clause 17(b). In the present case such a notice was given by the Bank on 26.6.1989 but the respondent wanted leave till April, 1990 i.e. for another eight months. It is thus clear that she had no intention of resuming duty within 30 days. Hence we are of the opinion that the action of the Bank in terminating her service on the ground of voluntary cessation of employment vide order dated 26.8.1989, annexure P-4 to this appeal, was valid.

E 13. Learned counsel for the appellant has relied on the subsequent clarification of the Fifth Bipartite Settlement which states :

"Voluntary Cessation of Service :

F 1(1) Clause 17 of the settlement will apply only in cases of desertion i.e. where there is absence from duty without any intimation. If there is an intimation from the employees but the absence is unauthorized otherwise, the Bank should take action in terms of disciplinary procedure laid down in previous settlements and not in terms of clause G 17 of the Fifth Bipartite Settlement."

H 14. In our opinion the above clarification is in fact an amendment to the earlier clause 17(b) and hence will have no retrospective effect in the absence of any express intention to that effect. The termination order was passed on 25.8.1989

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whereas the above clarification was made in 1990 when the service of the respondent has already come to an end.

15. Learned counsel for the respondent submitted that the clarification is retrospective in nature. We do not agree. In our opinion, we should not go by the nomenclature and we should see the substance of the matter. A clarification may in reality be an amendment, while an amendment may in reality be a clarification. It is not the nomenclature which matters but the real nature of the rule. In our opinion, the so-called clarification of January 1990 was in fact an amendment to clause 17(b) because it makes a major change to clause 17 (b). Hence in our opinion it has no retrospective effect.

16. The behaviour of the respondent remaining absent without leave for such long periods was clearly regrettable and unfortunate. We are fortified by the view we are taking by the decision of this Court in *Syndicate Bank v. General Secretary, Syndicate Bank Staff Association* 2000(5) SCC 65 as well as the decision in *Punjab & Sind Bank & Ors. v. Sakattar Singh* 2001(1) SCC 214. No establishment can function if it allows its employees to behave in such a manner. We, therefore, uphold the order of the appellant-Bank dated 25.8.1989 terminating the service of the respondent as a voluntary cessation of her job, and we set aside the award of the Tribunal dated 5.6.1996 and the impugned judgment of the High Court dated 22.9.2003. Appeal allowed. No order as to costs.

B.B.B.

Appeal allowed.