

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 14/2009

Date of Passing Award- 08.02.2023.

Between:

Shri Naresh Kumar,
House No. 55, Rajpur,
Gurmandi,
Delhi-110007.

Claimant.

Versus

The Divisional General Manager,
Bank of Maharashtra,
6/30,31 , WE Karol Bagh, Delhi-110005.

Management

Appearances:-

Shri S. K Rajput
(A/R)

For the claimant.

Shri Navin Thakar
(A/R)

For the Management

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of The Divisional General Manager, Bank of Maharashtra, 6/30,31, WE Karol Bagh, Delhi-110005 and its workman/claimant herein, under clause (d) of sub section (1)and sub

section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12012/66/2008- (IR(B-II)) dated 06.02.2009 to this tribunal for adjudication to the following effect:

“Whether the workman Sh. Naresh Kumar is entitled to join duty with full back wages and continuity of services the date of his termination w.e.f 24.4.1998. If yes , from which date ?”

As per the claim statement the claimant workman was appointed as a sweeper in the management Bank on 09.04.1988. For his hard work and sincerity on 15.07.1992 he was promoted to the posts of peon and worked as such till 31.08.1996. On 01.09.1996 he went to visit the holy temples of Rajasthan availing LTC and returned on 04.09.1996. But soon thereafter he fell ill and could not report for duty. During this period he remained under the treatment of doctors at Municipal Corporation Hospital Delhi. His period of treatment was long i.e from 06.09.1996 to 30.09.1998. The message of his illness causing absence from duty was duly intimated to the branch manager of the Bank where he was working. But no acknowledgment was granted to the said intimation by the Branch Manager for some ulterior intention. After recovering from illness, he went to attend his duty on 30.09.1998 and met the then Branch Manager Shri Ajai Banargee. The said manager informed him that his service has been terminated by the management and advised him to come to the office from time, to time so that some solution can be found out. On such assurance, the claimant was going to the branch till the year 2000. On 10th January 2001 the Branch Manager forwarded his application requesting reinstatement into service to the higher authorities of the bank. But no fruitful result could be achieved. Finding no other way the claimant approached the union and on behalf of him, the union served a demand notice on 11.08.2001. In this process the claimant spent time till 2003, hoping that his matter shall be reconsidered. But to his misfortune, he again fell ill on 21.04.2003 and remained under the treatment. After recovery, he met the DGM of the Bank and requested for reinstatement. He wrote several letters in this regard, but the same were not heeded to. On 24.11.2005, the claimant served a legal notice on the chairman of the Bank through his advocate. But the same was not replied. Finding no other way, he raised a dispute before the RLC (central) New Delhi, where a conciliation proceeding was initiated. But for the non appearance of the management, the conciliation failed and the appropriate government referred the matter for adjudication. Thus, the claimant has prayed for the relief of reinstatement in

service with full back wages, continuity of service and all other consequential benefit.

The management bank on receipt of the notice, appeared and filed written statement challenging the claim as barred by limitation since filed 9 years after his voluntarily cessation of employment from the Respondent Bank. It has been pleaded that the claimant filed this claim when there was no surviving Industrial Dispute between the bank and the workman. The other stand taken by the management is that the claimant was appointed as a temporary sub staff for two months in the Vivek Vihar Branch New Delhi by order dated 30.06.1992. Thereafter by order dated 24.09.1992 he was appointed as a permanent sub staff of the bank w.e.f 08.10.1992. Before that, he was working as a temporary sweeper in the bank. While working as a sweeper, he was very irregular in his duty and after appointment as a sub staff in the year 1992, he even became more irregular and started remaining absent unauthorizably without prior intimation. On many occasion, warning was given to him by the senior official of the bank. But his behavior never improved. In the year 1993, 1994, 1995 and 1996 he remained unauthorizably absent for 200 days and sometimes 150 days or more in a calendar year. A detail calculation of the days of absence has been mentioned in the WS. The management has further stated that the claimant, since 04.09.1996 remained unauthorizably absent from duty and several notices were sent in his residential address directing him to report for duty. Neither the claimant reported for duty, nor gave intimation explaining his absence. Final notice was sent on two occasions i.e. 12.09.997 and 11.12.1997 through special messenger by the branch manager of the Vivek Vihar Branch Delhi directing the claimant to report for duty within 30 days failing which he shall be deemed to have voluntarily retired from service in terms of Para 17 of the Vth Bipartite settlement. Despite receiving that notice the claimant did not report for duty. Copies of all the notices have been placed on record. On 10.03.1998 another notice was sent to the claimant directing him to report for duty within 30 days from the date of receipt and give explanation for his unauthorizably absence. In the said notice it was also mentioned that in case no explanation would be offered it would be deemed that he has retired voluntarily from service as per Para 17 of the V bipartite settlement. But the claimant, inspite of the said notice, failed to report for duty or give any explanation as called for with regard to his unauthorizably absence within the prescribed period. Hence, he was deemed to have retired voluntarily w.e.f 24.04.1998 and the claim is not maintainable.

The claimant filed rejoinder stating that delay was caused in raising this dispute mainly for the unsympathetic attitude of the bank and false assurance given. He also fell ill during the intervening period.

On these rivals pleading no specific issues were framed but by order dated 16.11.2010 it was directed that the adjudication shall be made in terms of the reference.

The claimant testified as WW1 and filed several documents marked in a series of WW1/1 to WW1/27. The said documents are the photocopies of several correspondence made by the claimant with the management requesting reinstatement and the postal receipt thereto. The claimant has also filed the photocopy of the medical certificate and fitness certificate issued by the Hospital for the relevant period. On behalf of the management Bank, one Rajender Sarohiwal, the Chief Manager testified as MW1. He filed several documents marked as MW1/1 to MW1/14. These documents are the copy of the order giving promotion to the claimant in the year 1992, copies of the letter and notices issued to the claimant and the copy of the final order passed by the management treating the claimant as retired voluntarily from service. Photocopies of the attendance register evidencing continuous absence of the claimant has also been placed on record.

At the outset of the argument, the Ld. A/R for the claimant submitted that the management took a vindictive action against the claimant and did not consider the grounds of absence as mentioned by him. Though, as per the bipartite settlement a person's unauthorized absence can be treated as voluntary retirement after serving a showcause notice giving him 30 days time to join, in the case of the claimant the said procedure was never complied. Hence, the stand of the management taken in this proceeding cannot be accepted. The counter argument of the management is that the claimant was duly served with all the notices by which he was called upon to report for duty within 30 days or to show sufficient and reasonable cause for his absence. But for the non response of the claimant, the final order was passed which was in terms of the Vth bipartite settlement. It has also been stated that the claim raised after 9 years is hopelessly barred by limitation.

The admitted facts are that the claimant was appointed as a part time sweeper in the bank on 09.04.1988. While he was working in the said post, on 30.06.1992 an order was passed appointing him as a temporary subordinate staff

and was made a permanent staff on 08.10.1992. It is also admitted that the service of the claimant was brought to an end w.e.f 24.04.1998, treating that the claimant has retired voluntarily from the service. Whereas the management has pleaded that the said decision was taken in terms of Para 17 of the V Bipartite settlement, the claimant has stated that none of the required procedure was followed before passing the final order in terms of Para 17 of the V bipartite settlement.

FINDINGS

Para 17 of the 7th Bipartite settlement relied upon by the management reads as follows:-

”17. Voluntary cessation of employment by the employee:

The earlier provisions relating to the voluntary cessation of employment by the employee in the earlier settlements shall stand substituted by the following:

- a) When an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or 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 in India or when the management is reasonably satisfied that he has no intention of joining 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 the notice, stating inter alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or given an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the banks service on the expiry of the said notice. In the event of the 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 the law or rules of service.”

As per this provision of bipartite settlement the management reserves the right of treating the occasion of unauthorized absence as the voluntary retirement of the employee, if he would fail to show sufficient cause for absence or report for duty within 30 days from the date of receipt of the notice. In this case the

management has pleaded about due service of notice on the claimant whereas the claimant has denied the same. The witness examined on behalf of the management has exhibited the notices sent to the claimant calling upon him to report for duty or to show cause for the unauthorized absence. The photocopies of the notices sent to the claimant on different dates calling him to join duty have been filed as exhibit MW1/10(colly). On the basis of this document the management has pleaded that on 12.09.1997 and 11.12.1997 two separate notices were sent to the claimant through special messenger and same were duly served on the claimant. The notices have been marked as MW1/4. But these notices nowhere contains the acknowledgement of receipt of the claimant or the certificate of the special messenger leading to a conclusion that the notices were served on the claimant personally. On behalf of the management another notice dated 10.03.1998 which is a photocopy, has been placed under record as exhibit MW1/6. In this notice the claimant was intimated that his absence will be treated as voluntary retirement in view of clause 17 of the V bipartite settlement. But surprisingly the said notice doesn't contain the acknowledgment of receipt by the claimant. The final order dated 01.06.1998 has been filed as MW1/7. But all these documents stand contrary to the oral statement of MW1, who has stated that all the notices were served personally on the claimant. The special messenger, who had served the notices on the claimant has not been examined by the management. It is a fact noticeable that clause 17 of the Vth bipartite settlement, as relied upon by the management, contemplates that the management, before taking a decision for treating the unauthorized absence as voluntary retirement, shall come to a conclusion that satisfactory evidence exists that the employee has no intention of joining the duties. The management thereafter, shall give a notice to the claimant calling him to report for duty within 30 days from the date of receipt of the notice or stating interalia the grounds for coming to the conclusion that the employee has no intention of joining the duty. The notice in terms of clause 17 of the bipartite settlement has been marked as MW1/6. This notice nowhere indicates about the opinion formed by the management holding that the employee has no intention of joining duty. MW1/6 also doesn't show that the said notice was duly served on the claimant. Similarly the final order dated 01.06.1998 filed as MW1/7 doesn't show reason for which the management took the decision of treating the unauthorized absence as the voluntary retirement.

The witness examined on behalf of the management while filing the photocopies of the attendance register tried to prove that the claimant was a habitual absentee from duty. These are not the original document but the

photocopies. These documents have been placed on record to prove the past conduct of the claimant which is not the subject of the adjudication. But it is a fact to view that the claimant was given promotion on 30.06.1992 as a part time sub-staff, when he was working as a sweeper. Thereafter, by order dated 24th Sep, 1992 he was appointed as a full time sub-staff of the bank. It is not understood as to how the bank granted promotion to the claimant when as per their record he was regularly irregular in his job. The photocopy of the attendance register placed on record have been disputed by the claimant. On behalf of the claimant the allegation has been labeled that these photocopies of the attendance register have been manipulated and the serial no. of employee at many places are missing and the same is not maintained chronologically. The witness examined on behalf of the mgt was confronted with the said irregularities. The witness explained that the irregularity happened due to improper preparation of the photocopies. This explanation is not accepted since the mgt is the custodian of the original documents and when a doubt was created with regard to the authenticity of the document, the proper recourse by the mgt would have been production of the original. But in this case the mgt neither produced the original nor offered any explanation for the non-production which amounts to suppression of material document. The photocopies of the attendance register as filed by the management is thus not accepted as admissible evidence.

Thus, on a careful analysis of the evidence, it appears that the mgt took a serious view of an alleged unauthorized absence of the claimant and by resorting to the provision made in clause 17 of the Vth Bipartite settlement came to a conclusion that the said unauthorized absence is required to be treated as voluntarily retirement. But this decision of the mgt appears to be wrong since before passing the order of vol. retirement, as required under clause 17 the mgt had not formed any opinion that the circumstance show that the employee has no intension to join the duty. Similarly, there is no material before this Tribunal to presume that the notice recalling the workman for duty or to show cause was ever served on the claimant. The claimant has filed the photocopy of the medical certificate and fitness certificate for the relevant period which has not been disputed by the mgt in any manner except the date of issue. But the said objection is not accepted since the Doctor who treated the claimant has only certified that he was under his treatment from 06.09.1996 to 30.09.1998 and on that day i.e on 30.09.1998 the certificate was issued. Thus, it cannot be held that the document is a manipulated one.

Now, it is to be seen what relief can be granted to the claimant for the illegal action of the management in voluntarily retiring him. The order of voluntarily retirement was passed against the claimant on 24.04.1998 . The claimant when testified as WW1 stated that his age in the year 1998 was 35 years. As such, as on today he is more than 60 years and has attained the age of superannuation. In such a situation, it is not felt proper to issue any direction to the bank to allow the claimant to join his duty. It is also not felt proper to allow the full back wages to the claimant since as per his own admission had remained on medical leave and there is no material to presume that the claimant had enough leave to his credit at that time. The period of absence being for illness, it would be proper to treat that the said period as no pay for no work. A lump sum financial benefit would justify the wrong done to the claimant instead. Hence ordered.

ORDER

The claim be and the same is allowed on contest. It is held that the service of the claimant was brought to an end illegally by the mgt holding his absence as unauthorized absence and accepting the same as voluntarily retirement. The circumstances also do not justify full back wages to the claimant for the period of absence from duty. It is directed that the claimant shall be deemed to have been in duty from 15.07.1992 when he absented himself from duty on account of illness and till the date of his superannuation. He shall be allowed all the retirement benefits as admissible to him including pension. His pay shall be according fixed. So far as the claim for the back wage is concerned, it is directed that the bank shall pay the lump sum amount of Rs. 7,00,000/- (7 Lakh) toward back wages. This amount shall be paid by the bank within 2 months from the date of publication of award, failing which he amount shall carry interest @ 9% p.a from the date of award and till the final payment is made. The Claimant retiral benefits shall also be settled by bank within 3 months from the date of publication of this award.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
8th February, 2023.

Presiding Officer.
CGIT-cum-Labour Court.
8th February, 2023.

