

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2838 OF 2011

STATE BANK OF INDIA & ORS.

Appellant(s)

VERSUS

RAM SINGH

Respondent(s)

O R D E R

1. The present appeal is directed against an order dated 22.01.2010 passed by the High Court of Punjab and Haryana at Chandigarh, whereby the Regular Second Appeal filed by the appellant was dismissed.

2. The respondent joined the services of the appellant - Bank as Messenger on 10.11.1987. He completed the period of probation and was conferred the status of a regular employee. The respondent was intermittently absent from duty for a long period from 04.12.1990 to the year 1996. On 28.12.1997, the appellant granted leave for 682 days and also inflicting minor punishment of censure with no annual grade increment for the period of leave.

3. The respondent again absented from duty from 01.08.1999. A notice was served by the appellant to the respondent at his recorded address on 21.09.1999, directing to resume his duties within three days. His explanation for unauthorised absence was also sought.

4. Since the respondent neither joined duty nor submitted any explanation, a second notice by Registered Post was sent to the respondent, calling upon him to resume his duties within four days along with explanation for unauthorised absence. The respondent did not respond to the second notice as well.

5. On 08.11.1999, a third notice by Registered Post was sent to the respondent directing him to resume his duties within three days and also submit the reasons for his absence, but again without any result.

6. It was on 28.12.1999, a fourth notice by Registered Post was sent to the respondent calling upon him to resume his duties within 30 days, failing which he shall be deemed to have voluntarily retired from service. Such notice was in terms of 5th Bipartite Memorandum of Settlement arrived at between the Management of number of Banks, including the appellant-Bank, and their workmen on 10.04.1989.

7. Clause 17 of the said Bipartite Settlement reads thus :-

"17. Voluntary Cessation of Employment
by the Employees

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 given an explanation for this absence within the said period of 30 days satisfying the management that he has not taken up another employment or a vocation and 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 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 bank's right to take any action under the law or rules of service.

b) xxxxx

c) xxxxx"

8. An information was sent on 10.02.2000 informing the respondent that since he had failed to report to duty on 28.01.2000 i.e. within 30 days of the fourth notice, he is deemed to have voluntarily retired on 29.01.2000.

9. Another notice was sent to the respondent on 19.04.2000 reiterating that the respondent is deemed to have voluntarily retired from service on 29.01.2000. Another information was sent to the respondent on 09.05.2000 informing him that he stands retired from service with effect from 01.08.1999. It appears that the date of 01.08.1999 is on account of such mistake as it is not the case of the appellant, that the services of the respondent were every terminated on 01.08.1999.

10. It may be stated that from the date the first notice was served on 21.09.1999, the respondent offered no explanation for his absence nor joined his duties.

11. The respondent filed a suit for declaration and mandatory injunction before the Civil Court claiming that he should be deemed to be in service with continuity of service from the date of his appointment and the notices dated 28.12.1999, 10.02.2000, 19.04.2000 and 09.05.2000 are void, illegal and in violation of principles of natural justice. The trial court dismissed the suit on 25.07.2006.

12. The respondent filed an appeal against the Judgment and Decree passed by the trial court. Such Judgment and Decree was set aside and the suit decreed by the Additional District Judge on 18.04.2007.

13. Aggrieved by the judgment and decree passed by the Additional District Judge, the appellant-Bank filed a second appeal before the High Court, which was dismissed by the impugned judgment. Thus, the Bank is in appeal before this Court.

14. The learned counsel for the appellant argued that the services of the respondent came to an end on 29.1.2000 in terms of the 5th Bipartite Memorandum of Settlement dated 10.04.1989 and thus, in terms of the said settlement, on account of failure of the respondent to join duties, the services of the respondent have been rightly come to an end.

15. On the other hand, the learned counsel appearing for the respondent referred to 7th Bipartite Memorandum of Settlement, signed on 27.03.2000, which deleted Clause 17 of the 5th Bipartite Settlement by Clause 33 of such settlement. The relevant Clause from the 7th Bipartite Settlement reads thus :-

“(A) xxxxx

(B) *A Bipartite Settlement was signed between IBA and National Organisation of Bank Workers (NOBW) on 22nd October, 1997 whereby NOBW agreed not to seek re-opening of any of the industry level settlements signed subsequent to Settlement dated 25th April 1980 and as such signed the Settlement dated 28th November, 1997 as one of the Unions representing "workmen employees of the banks."*

16. Clause 37 of the Settlement reads as under :-

“37. Date of Effect and Operation

(i) This Settlement shall be binding on the parties for five years from 1"

November, 1997. Six months before the Settlement expires, the Unions may submit their charter of demands to the IBA. The negotiations will commence before the last three months of the expiry of the settlement.

(ii) xxxxxxxx."

17. The argument of Mr. Aggarwal is that though settlement was signed on 27.03.2000, but in view of the settlements arrived on 22.10.1997 and 28.11.1997, there could not be any cessation of service on account of absence from duty in terms of Clause 17 of 5th Bipartite Settlement.

18. Finding *prima facie* merit in the said argument, the appellant was asked to produce the settlements dated 22.10.1997 and 28.11.1997. The said settlements have been produced on record with I.A.No. 103078 of 2022, as Annexures A2 and A3.

19. Such settlements do not deal with Clause 17 of the Bipartite Settlement arrived at on 10.04.1989. It was only in the settlement signed on 27.03.2000, Clause 17 was deleted. Therefore, on the date of the deemed cessation of service, i.e. vide Registered Notice dated 28.12.1999, Clause 17 was valid and operative clause. Therefore, the services of the

respondent could be terminated in terms of the Bipartite Settlement.

20. In view of the said fact, we find the argument raised by Mr. Aggarwal, on the basis of 7th Bipartite Settlement, to be not tenable as on the date of notice of cessation of service in terms of the Bipartite Settlement sent, the services could be terminated by one month's notice.

21. The next argument of Mr. Aggarwal is that the 7th Bipartite Settlement would be binding on the parties for five years from 01.11.1997, however, we do not find any merit in the said argument.

22. The 7th Bipartite Settlement has various terms including payment of allowances, increase in pay etc. Clause 17(a) pertains to those clauses which are beneficial to the members of the workers' union. However, the omission of Clause 17 in the 5th Bipartite Settlement will come into force only on the date of signing of the settlement and not before that as Clause 37 has not been given retrospective effect nor can have retrospective effect by the very nature of the effect of the settlement. An action taken, when the settlement was valid would not become invalid on account of such deletion of the clause.

23. Another argument of Mr. Aggarwal that 5th Bipartite Agreement was valid only for five years and, therefore, on the date of the impugned communication, there was no valid settlement, is again not tenable. In the absence of any decision to do away with the power of cessation of services in Clause 17 of the Bipartite Settlement, such clause will continue to be operative as there is no indication in the subsequent settlements produced before this Court to the contrary.

24. Consequently, the present appeal is allowed. The Judgment and Decree passed by the High Court is set aside and the suit is dismissed.

Pending interlocutory application(s), if any, is/are disposed of.

.....J.
[HEMANT GUPTA]

.....J.
[VIKRAM NATH]

New Delhi;
JULY 28, 2022.

ITEM NO.104

COURT NO.9

SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 2838/2011

STATE BANK OF INDIA & ORS.

Appellant(s)

VERSUS

RAM SINGH

Respondent(s)

Date : 28-07-2022 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE VIKRAM NATH

For Appellant(s) Mr. P. S. Patwalia, Sr. Adv.
Mr. Sanjay Kapur, AOR
Ms. Megha Karnwal, Adv.
Mr. Arjun Bhatia, Adv.
Mr. Aashish Kumar, Adv.

For Respondent(s) Mr. Parveen Kumar Aggarwal, Adv.
Mr. Abhishek Grover, Adv.
Ms. Kajal Gupta, Adv.
Mr. Sanjay Jain, AOR

UPON hearing the counsel the Court made the following
O R D E R

The Civil Appeal is allowed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed
of.

(JAYANT KUMAR ARORA)
ASST. REGISTRAR-CUM-PS

(RENU BALA GAMBHIR)
COURT MASTER

(Signed order is placed on the file)