

Viveka Nand Sethi vs Chairman, J & K Bank Ltd. & Ors on 3 May, 2005

Equivalent citations: AIR ONLINE 2005 SC 81, (2005) 2 ESC 260, 2005 SCC (L&S) 689, (2005) 4 SCALE 587, (2005) 3 LAB LN 57, (2005) 4 SERV LR 676, 2005 (5) SCC 337, (2005) 2 LAB LJ 1034, (2005) 3 SERV LJ 148, (2005) 3 PAT LJR 55, (2005) 4 SCJ 585, (2005) 2 SCT 702, (2005) 5 JT 193, 2005 LAB LR 641, (2005) 4 SUPREME 232, (2005) 5 JT 193 (SC)

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Bench: N. Santosh Hegde, S.B. Sinha

CASE NO.:
Appeal (civil) 9676 of 2003

PETITIONER:
Viveka Nand Sethi

RESPONDENT:
Chairman, J & K Bank Ltd. & Ors.

DATE OF JUDGMENT: 03/05/2005

BENCH:
N. Santosh Hegde & S.B. Sinha

JUDGMENT:

J U D G M E N T W I T H CIVIL APPEAL NO.9678 OF 2003 S.B. SINHA, J :

These two appeals arising out of a common judgment and order dated 10.2.2003 passed by the High Court of Jammu & Kashmir at Jammu were taken up for hearing together and are being disposed of by this common judgment.

Interpretation of a bipartite settlement dated 8.9.1983 is in question in these appeals which arise out of the aforementioned judgment and order passed by a Division Bench of the said court dismissing an appeal preferred by the Jammu & Kashmir Bank Ltd. (hereinafter referred to as 'the Bank'), affirming a judgment and order dated 15.12.1999 passed by a learned Single Judge of the said court whereby and whereunder an award dated 4.10.1995 passed by the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh, directing the workman to be reinstated in service with the benefit of past service without any back wages had not been interfered with.

The workman was working as a Cashier-cum-Clerk with the Bank. He was transferred to Kolkata on

or about 2.4.1981; but he did not join the said office or before 14.4.1981, when he was supposed to do so. On his failure to report to Kolkata office by 14.4.1981, a notice was issued by the Bank on 22.6.1981 asking him to show cause as to why disciplinary proceedings should not be initiated against him. Taking however a lenient view, he was transferred to Amritsar on 6.8.1981 and then to Samba on a representation having been made in this behalf. He later on was transferred to Amritsar again. He joined Amritsar Branch on 29.7.1982. A leave for a period of 28 days was sought for and sanctioned in favour of the workman on an application made therefor by him on or about 9.10.1982. A further leave of 9 days was sanctioned by an order dated 17.11.1982. Yet again he filed an application seeking leave for one month on 19.5.1983; although he had only 25 days accumulated leave to his credit and his leave account had already been deducted by 50 days' medical leave.

A bipartite settlement was entered into by and between the management of 58 Banks including the Appellant-Bank herein and their workmen; clause 2 whereof is as under :

"2. Voluntary Cessation of employment by the employees.

Whereas an employee has not submitted any application for leave and absents himself from work for a period of 90 or more consecutive days without or beyond any leave to his credit or absents himself for 90 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended and where there is satisfactory evidence that he has taken up employment in India and the management is satisfied that he has no present intention of joining duties, the management may at any time thereafter give a notice, to the employee's last known address calling upon the employee to report for duty within 30 days of the notice stating, inter alia, the grounds for the management 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 or unless he gives an explanation for his absence 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 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."

Despite the expiry of the period of leave in June 1983, the workman did not report back for duties, whereupon the Branch Manager, Amritsar, informed him by a letter dated 2.11.1983 that he should rejoin his duties, which was not complied with. An explanation was sought for from him by Memorandum dated 2.11.1983 whereby and whereunder he was asked to show cause as to why he had been on unauthorized leave for such a long period. Such an explanation was to be filed by 10.11.1983. He had further been asked to join duties. Despite service of the said memo., the workman failed to join his duties by 31.12.1983. Consequently, a show cause notice dated 31.12.1983 served on him whereby and whereunder he was intimated that in the event of his failure to resume his duties by 15.1.1984 he would be deemed to have been discharged from the services of the Bank.

In reply thereto, a telegram from one Krishan Chand Sethi was received stating that the workman being unwell could not join his duties by 15.1.1984. He again applied for grant of leave on medical ground on 15.2.1984. As by reason of the aforementioned act on the part of the workman, the Bank felt a great deal of inconvenience, a memorandum was served on 20.2.1984, pursuant whereunto again he requested for sanctioning of leave. His services were dispensed with by invoking clause (2) of the bipartite settlement stating :

"3. Consequent upon receipt of these applications from Mr. V. Sethi, the bank had no alternative but to make confidential enquiries about the state of his health in pursuance of which it was revealed that Mr. V. Sethi was keeping a good health and even attended to his family business. This convinced the bank that Mr. Sethi was not at all interested in the services of the bank, which prompted it to issue an order vide No. Per/Disp/84-448 dated 17.5.1984 in accordance with the provisions contained in Memorandum of Settlements dated 8.9.1983 and Mr. Sethi was deemed to have voluntarily retired from the services of the bank w.e.f.8.2.1984."

A legal notice was served upon the Bank herein after a long time demanding the reinstatement of the workman on or about 6.4.1989, to which it was replied that he had been engaged in some business at Samba and thus it was clear that he had no interest in continuing in the services of the Bank. Sometime in June 1989, a conciliation proceeding was initiated by him under the Industrial Disputes Act resulting in a reference made by the Central Government in terms of a Notification dated 7.8.1990.

Inter alia, on the ground that the bank allegedly did not place on records the settlement dated 8.9.1983, the impugned award was passed. In the writ petition filed thereagainst by the Bank it was specifically averred :

" It is important to point out here that the relevant Bipartite Settlement is applicable to the Management of the Bank and the Staff Union of the Workmen is just in the form of Book and the petitioner-bank while perusing its case has placed that book of Bi-Partite Settlement before the respondent No.2 but the respondent No.2 without considering that settlement has remained under this impression that Bi-Partite Settlement is just a form of some document consisting of some leaves and has not placed on record which is not true. The order passed by the respondent No.2 is totally in contravention of Bi- partite Settlement and deserves to be quashed on this score only.

A writ petition was also filed by the workman questioning non-grant of back wages. Both the writ petitions were heard together. In the said proceedings, the workman filed an application purported to be under Section 17-B of the Industrial Disputes Act, which was not supported by an affidavit as is required in law. The learned Single Judge although noticed the contentions raised in both the writ petitions, but dealt with the one filed by the workman only. An appeal preferred thereagainst was also dismissed.

Mr. Rohit M. Alex, the learned counsel appearing on behalf of the Bank, would submit that the Central Government Industrial Tribunal-cum- Labour Court as also both the learned Single Judge and the Division Bench of the High Court proceeded on a wrong premise that it was obligatory on the part of the Bank to conduct a full fledged departmental proceeding. According to the learned counsel the Industrial Tribunal as also the High Court erred in law insofar as they failed to take into consideration that the principles of natural justice had been complied with as repeated opportunities had been given to the workman to explain his position as also report for duties. Strong reliance, in this behalf, has been placed on *Syndicate Bank vs. General Secretary, Syndicate Bank Staff Association and Another* [(2000) 5 SCC 65] and *Punjab & Sind Bank and Others vs. Sakattar Singh* [(2001) 1 SCC 214].

Mr. Ashok Mathur, the learned counsel appearing on behalf of the workman, on the other hand, would contend that as a plea for extension of leave was raised by the workman, if the same had not been proved to be satisfactory to the management, it was obligatory on its part to conduct a departmental proceeding against him. In any event, the learned counsel would contend that the applicability of the bipartite settlement having not been gone into by the Industrial Tribunal as also by the High Court, the matter should be remitted to the Tribunal.

Before the Industrial Tribunal, the workman did not deny or dispute the existence of the bipartite settlement. He merely raised a plea that the same was not applicable. The plea of the Bank, on the other hand, was that the stipulations contained in the bipartite settlement were attracted if the employer arrives at a satisfaction that that there were sufficient grounds for it to arrive at a conclusion that the employee was no longer interested to continue in the service.

The fact that there exists a bipartite settlement entered into by and between the Banks and their workmen is not in dispute. The workman was all along aware about the said legal position inasmuch as, at all stages, viz., issuance of notices and memorandums, passing of the order of termination, the said settlement had been referred to.

What fell for consideration before the Industrial Tribunal was the interpretation and/or applicability of the said settlement. The Industrial Tribunal committed an error of record insofar as it proceeded on the basis that the said settlement had not been proved. The settlement being an admitted document should have been considered in its proper perspective by the Industrial Tribunal. Clause (2) of the said settlement is a complete code by itself. It lays down a complete machinery as to how and in what manner the employer can arrive at a satisfaction that the workman has no intention to join his duties. A bare perusal of the said settlement clearly shows that it is for the employee concerned to submit a proper application for leave. It is not in dispute that after the period of leave came to an end in June 1983, the workman did not report back for duties. He also did not submit any application for grant of

further leave on medical ground or otherwise. It is in that situation the memorandum dated 2.11.1983 was issued and he was asked to joint his duties. It is furthermore not in dispute that despite receipt of the said memorandum, the workman did not join duties pursuant whereto he was served with a notice to show cause dated 31.12.1982. He was required to resume his duties by 15.1.1984. The Bank received a telegram on 17.1.1984 and only about a month thereafter he filed an application for grant of leave on medical ground. It is not the case of the workman that any leave on medical ground or otherwise was due to him. Opportunities after opportunities indisputably had been granted to the workman to explain his position but he chose not to do so except filing applications for grant of medical leave and that too without annexing proper medical certificates.

The bipartite settlement is clear and unambiguous. It should be given a literal meaning. A bare perusal of the said settlement would show that on receipt of a notice contemplated thereunder, the workman must either : (1) report for duties within thirty days; (2) give his explanation for his absence satisfying the management that he has not taken any employment or avocation; and (3) show that he has no intention of not joining the duties. It is, thus, only when the workman concerned does not join his duties within thirty days or fails to file a satisfactory explanation, as referred to hereinbefore, the legal fiction shall come into force. In the instant case except for asking for grant of medical leave, he did not submit any explanation for his absence satisfying the management that he has not taken up any other employment or avocation and that he has no intention of not joining his duties.

In the aforementioned fact situation we do not see any reason as to why the Bank could not arrive at a satisfaction that the workman had no intention to join his duties. It is interesting to note that though the said order was passed on 17.5.1984, a representation to the Bank was made by the workman to reconsider the said decision after a period of 3 years and 2 months by a letter dated 31.7.1987 Yet again a dispute was sought to be raised by issuance of a legal notice on the Bank only on 6.4.1989.

Mere sending of an application for grant of leave much after the period of leave was over as also the date of resuming duties cannot be said to be a bona fide act on the part of the workman. The Bank, as noticed hereinbefore, in response to the lawyer's notice categorically stated that the workman had been carrying on some business elsewhere.

We cannot accept the submission of Mr. Mathur that only because on a later date an application for grant of medical leave was filed, the same ipso facto would put an embargo on the exercise of the jurisdiction of the Bank from invoking clause (2) of the bipartite settlement.

It may be true that in a case of this nature, the principles of natural justice were required to be complied with but the same would not mean that a full-fledged

departmental proceeding was required to be initiated. A limited enquiry as to whether the employee concerned had sufficient explanation for not reporting to duties after the period of leave had expired or failure on his part on being asked so to do, in our considered view, amounts to sufficient compliance of the requirements of the principles of natural justice.

Clause (2) of the bipartite settlement raises a legal fiction, which is of wide import. Once the action on the part of the employer is found to be fair, the court in view of such legal fiction would call upon the workman to prove contra. It will bear repetition to state that the only defence which came to be raised by the workman was non-applicability of the bipartite settlement. The notice dated 31.12.1983 refers to the said settlement by necessary implication, as on the failure of the workman to resume his duties by 15.1.1984, it was stated that he would be deemed to have been discharged from the services of the Bank. Yet again in terms of the memorandum dated 20.2.1984, attention of the workman was drawn to the fact that his application for grant of leave was neither in the prescribed form nor any medical certificate was attached thereto. It was pointed out that the medical certificate shows that he was under the doctor's treatment from 22.10.1983 to 22.1.1984 and as such he should have reported for duties on 23.1.1984 and as he failed to do so, it gave rise to an inference that he was not interested to continue in Bank's services. He did not submit any satisfactory explanation nor he filed any valid medical certificate. It was in that situation, the order dated 17.5.1984 was issued which again referred to the provisions contained in memorandum of settlement dated 8.9.1983. The workman ex facie appears to have accepted the said order as for a long period he maintained silence. Had he been interested in the Bank's services, it was expected of him to resume his duties and/or file proper application for grant of medical leave with a valid medical certificate.

The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. [See Dr. Gurjeewan Garewal (Mrs.) vs. Dr. Dumitra Dash (Mrs.) and Others [(2004) 5 SCC 263]. The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. [See State of Punjab vs. Jagir Singh (2004) 8 SCC 129] and Karnataka State Road Transport Corporation & Anr. Vs. S.G. Koturappa & Anr. 2005 (2) SCALE 493].

The contention raised at the Bar appears to be squarely covered by two decisions of this Court relied upon by Mr. Alex. In Syndicate Bank (supra) Wadhwa, J. speaking for the Division Bench observed :

"14. Two principles emerge from the decisions: (1) principles of natural justice and duty to act in a just, fair and reasonable manner have to be read in the Certified

Standing Orders which have statutory force. These can be applied by the Labour Court and the Industrial Tribunal even to relations between the management and workman though based on contractual obligations; and (2) where domestic inquiry was not held or it was vitiated for some reason the Tribunal or Court adjudicating an industrial dispute can itself go into the question raised before it on the basis of the evidence and other material on record.

15. In the present case action was taken by the Bank under clause 16 of the Bipartite Settlement. It is not disputed that Dayananda absented himself from work for a period of 90 or more consecutive days. It was thereafter that the Bank served a notice on him calling upon him to report for duty within 30 days of the notice stating therein the grounds for the Bank to come to the conclusion that Dayananda had no intention of joining duties. Dayananda did not respond to the notice at all. On the expiry of the notice period the Bank passed orders that Dayananda had voluntarily retired from the service of the Bank."

It was further held :

"18. The Bank has followed the requirements of clause 16 of the Bipartite Settlement. It rightly held that Dayananda has voluntarily retired from the service of the Bank. Under these circumstances it was not necessary for the Bank to hold any inquiry before passing the order. An inquiry would have been necessary if Dayananda had submitted his explanation which was not acceptable to the Bank or contended that he did report for duty but was not allowed to join by the Bank. Nothing of the like has happened here. Assuming for a moment that inquiry was necessitated, evidence led before the Tribunal clearly showed that notice was given to Dayananda and it is he who defaulted and offered no explanation of his absence from duty and did not report for duty within 30 days of the notice as required in clause 16 of the Bipartite Settlement."

The aforementioned legal position was reaffirmed by a decision of three-Judge Bench in Punjab & Sind Bank (supra), wherein it has been held :

" 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 anymore and will stand retired from service. Thus, there is no punishment for misconduct but only to notice the realities of the situation resulting from long absence of an employee from work with no satisfactory explanation thereto ".

In the fact situation obtaining therein it was held that there had been sufficient compliance for principle of natural justice.

In Syndicate Bank (supra), this Court noticed the decision of three- Judge Bench of this Court in D.K. Yadav vs. J.M.A. Industries Ltd. [(1993) 3 SCC 259] whereupon the Industrial Tribunal had placed strong reliance. In D.K. Yadav (supra) admittedly no opportunity was given to the workman and no inquiry was held. In that situation, it was observed :

"8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person."

Keeping in view the fact that we have ourselves considered the pleadings of the parties as also the materials on records, it is not necessary to remit the matter to the Tribunal as it would not serve any purpose. So far as the appeal preferred by the workman is concerned, it is not necessary to entertain the same as it is evident that Section 17-B of the of the Industrial Disputes Act cannot now be applied in view of the fact that the workman did not file an affidavit before the learned Single Judge in support of his contentions and as required under law.

Having regard to the facts and circumstances of the case and for the reasons stated hereinbefore, we are of the opinion that the appeal preferred by the Bank should be allowed and that of the workman should be dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.