

[2019] 9 S.C.R. 1

NARENDRA KUMAR

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v

CHAIRMAN AND MANAGING DIRECTOR,
SYNDICATE BANK & ORS.

(Civil Appeal No. 4489 of 2019)

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APRIL 30, 2019

**[S.A. BOBDE, SANJAY KISHAN KAUL AND
INDIRA BANERJEE, JJ.]**

Service Law: Pension – Qualifying period for pension – Interruption in service – Appellant working as law officer in respondent-bank (parent department) went on deputation to the Debt Recovery Tribunal (DRT) – During the period of deputation, he applied for the post of Presiding Officer at DRT – Respondent-bank forwarded 'No Objection Certificate' for consideration of appellant for the said post – Appellant was selected – Copy of letter of appointment was endorsed to the respondent-bank – Appellant was asked to take charge – Appellant requested the respondent-bank for permission to take over the charge of the said new post but bank sent no response to his letter – DRT released the appellant and then he took over charge as Presiding officer – After eleven months, respondent-bank asked the appellant to resign from the service of bank – After some communications, appellant tendered his resignation which was accepted by the respondent-bank and he was relieved – Thereafter appellant was informed that only a sum of Rs.2.41 lacs was payable to him on the basis of total service of 18 years and 10 months, denying him pensionary benefits by forfeiting the service of 9 years – Appellant filed writ petition before High Court which was dismissed on the ground that he was not entitled to pension in view of non-compliance of clause 22(2) of the Pension Regulations as he was required to join back the services of the bank on being relieved from the DRT but he straight away joined the post of Presiding officer and, therefore, the period after DRT relieved him was treated as abandonment of service – On appeal, held: The appellant was on deputation when he was so appointed and took over the new post – Before applying for the post of Presiding officer, DRT, a 'No Objection Certificate' was obtained from the respondent-bank – The period of deputation of the appellant

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- A *was extended keeping in mind the fact that he had already applied for the post and his application was pending consideration – The fact that he did not report back to the bank for a couple of days; got himself relieved and then joined the post cannot be categorized as ‘interruption in service’ – He had already addressed a communication to respondent-bank which elicited no response for 11 months – Even the parent Ministry of respondent-bank, brought to the notice of the bank the inappropriateness of not extending the benefits – Impugned decisions of the respondent bank were wholly unjustified – Syndicate Bank Employees Pension Regulations, 1995.*
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Allowing the appeal, the Court

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HELD: The appellant was on deputation from time to time. It was during the extended period that the appellant was issued the appointment letter. It is a hyper technical view to take that the appellant ought to have joined the respondent No.1 Bank for a couple of days, got himself relieved and then joined the office

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of the Presiding Officer, DRT. It, thus, appears to be more of an ego issue rather than any case of service impropriety or illegality. The appellant even took the precaution to write a letter to respondent No.1 Bank for permission to take over charge of the new post of Presiding Officer which post he had to occupy within

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a period of one month. This letter received no response for 11 months, a clear laxity on the part of the respondent No.1 Bank. The appellant, thus, joined the post of the Presiding Officer. No shadow whatsoever can be cast over the conduct of the appellant in this behalf. There was no interruption of service of the Bank employee as would cause such forfeiture. The appellant was on

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deputation when he was so appointed and took over the new post. The fact that he did not report back to the Bank for a couple of days, got himself relieved and then joined the post cannot be categorized as ‘interruption in service’ by any stretch of imagination. [Paras 14, 15] [8-D-G; 9-A-B]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No.4489 of 2019

From the Judgment and Order dated 31.03.2017 of the High Court at Allahabad, Lucknow Bench in Writ Petition Service Bench No. 947 of 2010

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Raju Ramchandran, Sr. Adv., Ms. Amita Sehgal, Satish Mathur, A
Pawan, Ms. Puja Sharma, Advs. for the Appellant.

Adarsh B. Dial, Sr. Adv., Rajiv Nanda, Ms. Ananya Datta Majumdar, Ms. Sumati Anand, P. V. Yogeswaran, Rupesh Kumar, Hemant Arya, Mrs. Anil Katiyar, Advs. for the Respondents.

The Judgment of the Court was delivered by B

SANJAY KISHAN KAUL, J. 1. Leave granted.

2. The appellant joined the services of Syndicate Bank, respondent No.1, as a Law Officer in the year 1979. He went on deputation to the Debt Recovery Tribunal, Allahabad as Secretary/Registrar for a period of three years from 25.3.1996 which period was extended by one year when he was posted in that capacity in Allahabad. The appellant was thereafter repatriated to the parent department of the respondent after four years.

3. The appellant was again sent on deputation as Secretary/ Registrar of the Debt Recovery Appellate Tribunal, Allahabad for one year on 29.11.2001 which period was extended twice by one year each. The request of the Chairperson of the Debt Recovery Appellate Tribunal, Allahabad requesting for further extension of deputation was, however, declined by the respondent No.1, his parent department. But on the Chairperson writing a letter to the Executive Director of the Syndicate Bank, by a notification dated 10.2.2005, the appellant was granted further extension of six months upto 28.5.2005. D

4. On 26.6.2005, an advertisement was published notifying vacancies for the post of Presiding Officer at Debt Recovery Tribunal, Lucknow for which post the appellant applied on 12.4.2005 during his period of deputation. The deputation was soon thereafter further extended upto 28.11.2005. Ministry of Finance, Union of India, respondent No.4 addressed a letter dated 2.8.2005 to respondent No.1 requesting to forward a 'No Objection Certificate' for consideration of the appellant for the post of Presiding Officer in the Debt Recovery Tribunal, Lucknow and the said 'No Objection Certificate' was issued by the respondent No.1 on 24.8.2005. In view of this development, the appellant requested the respondent Bank on 6.10.2005 for an extension of the period of deputation for a period of one year but the same elicited no response from the Bank. On 22.10.2005, the appellant appeared for interaction F

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- A before the Selection Committee chaired by an Hon'ble Judge of this Court in pursuance of the letter addressed to him on 10.10.2005. The Chairperson of Debt Recovery Tribunal, Allahabad also requested the Union of India for extension of the appellant on deputation on 18.11.2005 in view of this development and ultimately the period of deputation was extended with retrospective effect from 29.11.2005 to 28.5.2006 vide notification dated 1.12.2005.

- B 5. The appellant was selected for the post of Presiding Officer, Debt Recovery Tribunal, Lucknow and the appointment letter dated 20.01.2006 was issued and addressed to the Chairman and Managing Director of the respondent No.1 Bank with a copy endorsed to the appellant and the Chairperson of the Debt Recovery Appellate Tribunal, Allahabad. In terms of this appointment letter, the appellant was called upon to take over the charge as a Presiding Officer within one month from the date of issue of the letter. The appellant, thus, wrote to respondent No.1 Bank on 25.1.2006 requesting for permission to take over the charge of the said new post. No response was sent by the Bank to this letter. The Chairperson, Debt Recovery Appellate Tribunal released the appellant on 27.1.2006 and the appellant thereafter took over the charge of the post of Presiding Officer. A notification dated 9.2.2006 was issued by the Union of India/respondent No.4 of taking over charge of the appellant for a period of five years w.e.f. 30.1.2006 or till he attained the age of 62 years with a copy marked to respondent No.1 Bank.
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6. It is only after a gap of almost eleven months that, on 15.12.2006, the appellant received a letter from the respondent No.1 Bank in respect of the said appointment, which reads as under:

- F "We have for reference Govt. of India, Ministry of Finance, Department of Economic Affairs (Banking Division) letter No.A-15012/1/2005-DRT dated 20.01.2006, appointing you as the Presiding Officer at DRT, Lucknow. As per the terms of your said appointment, you are governed by the Terms and Conditions, as stipulated in Debts Recovery Tribunal (Salaries, Allowance and other Terms and Conditions of Service of Presiding Officer) Rules, 1998 and your retirement age is 62 years.
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Further, you are deputed by the Bank to DRAT, Allahabad, on 29.11.2001 and the term was extended by the Board of the Bank

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upto 29.11.2005, as a very special case. As you have joined DRT, Lucknow, after relief from DRAT, Allahabad, without our consent and without seeking relief from the service of the Bank, consequent to your fresh appointment, the Competent Authority has directed us to seek your retirement from the Bank's service. Please forward your application immediately.”

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7. The appellant responded to this letter on 12.1.2007 stating that he was submitting an application for retirement for which approval from respondent No.4 was required for which he addressed a letter of even date. However, the respondent No.1 Bank on 19.2.2007 called upon the appellant to resign from the service of the Bank as he had taken over as Presiding officer of the Debt Recovery Tribunal. Some communication in this behalf was exchanged but, suffice to say that, ultimately the appellant resigned and that resignation was accepted by the respondent No.1 Bank vide letter dated 10.3.2008. The said letter informed the appellant that he was being relieved from the services of the Bank by acceptance of his request for voluntary retirement with immediate effect. However, the dispute which forms the subject matter of the present proceedings arose from the latter part of this letter which reads as under:

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“Please note that though you have opted for Pension under Syndicate Bank Employees Pension Regulations 1995, you are not entitled for any pensionary benefits in view of the non-compliance of the following:-

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1. Clause No.22(2) of SBEPR-1995 stated that “an interruption in the service of the Bank employee entails forfeiture of his past service”. You were relieved from DRAT on 27.01.2006 and you should have joined our services immediately thereafter, but you have failed to do so. Instead of joining the Bank and getting relieved from the services of the Bank, you had directly joined Debt Recoveries Tribunal, Lucknow, violating laid down norms of Service Conditions applicable to you in our Bank. Hence, your absence from 28.01.2006 is treated as willful abandonment of service/Unauthorised absence.

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2. In terms of Clause No.29 of SBEPR-1995, “on or after 1st day of November 1993, at any time after an employee has completed 20 years of qualifying service, he may, by giving notice of not less

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- A than 3 months in writing to the appointing authority retire from service.

Whereas as stipulated in para 1, without any intimation/notice you have joined DRT, Lucknow and you did not get yourselves properly relieved from the services of the Bank and thereby you have

- B violated Regulation No.29 of SBEP-1995.”

- C 8. On 6.5.2008, the appellant was informed that only a sum of Rs.2,41,800/- was payable to the appellant on the basis of the total period of service of 18 years and 10 months. Thus, effectively the respondent No.1 Bank forfeited the services of the appellant of 9 years and granted benefit of gratuity to the appellant on the basis of 18 years of service. This was disputed by the appellant vide letter dated 10.7.2008 pointing out that his service was of 29 years and 2 months as the period of deputation in the DRT and DRAT was part of continuous service of the parent department for the purpose of gratuity. Pensionary benefits were requested vide letter dated 15.7.2008 but this did not invoke a positive response. The appellant, thus, addressed a letter to respondent No.4 which in turn addressed the communication to the Bank seeking a sympathetic consideration of the case of the appellant. But ultimately the request of the appellant was still rejected by the respondent No.1 Bank vide a letter dated 31.5.2010.

- E 9. The appellant filed a Writ Petition No.947(SB)/2010 before the Allahabad High Court, Lucknow Bench making the following prayers:

- F “a. To issue a writ, order or direction in the nature of certiorari thereby quashing the impugned order dated 31.05.2010 and dated 10.03.2008 as contained in Annexure-1 & Annexure-2 to the writ petition passed by the Opposite Parties No.1 & 2.

b. To issue a writ, order or direction in the nature of mandamus commanding the opposite parties 1 & 2 to grant the pensionary benefit to the petitioner and pay the entire arrears to the petitioner with interest.”

- G Interim orders were granted in favour of the appellant on 15.7.2010 staying the operation of the impugned orders dated 31.05.2010 and 10.03.2008.

- H 10. The Bank opposed the writ petition and pleadings were completed. Some supplementary affidavits were also filed and, alongwith

the same, the appellant filed a letter dated 25.7.2013 addressed by the respondent No.4 to respondent No.1 Bank obtained through RTI, the relevant portion of which is extracted hereunder:

“From the abovementioned events, it may be observed that appointment of Shri Kumar was made after proper No Objection & Vigilance Clearance from the bank. The appointment offer dated 20.01.2006 was also sent to them giving clear stipulations that Shri Kumar is requested to assume the charge of the post within the stipulated period. When Shri Kumar joined the post, a notification dated 09.02.2006 was issued which was also sent to the Bank. There was no communication from bank after issue of appointment letter dated 20.01.2006 and notification dated 09.02.2006. Bank raised the matter with the Ministry for the first time vide letter dated 17.7.2006 after a gap of more than 6 months.

It may also be observed that during the complete correspondence between Ministry & Bank there was no indication about treatment of service of Shri Kumar & it was on directions of the bank that Shri Kumar took retirement from service of bank. **Thus, action of the bank in treating the service of Shri Kumar from Jan 2006 to date of retirement as unauthorized absence and denial of pensionary benefits does not appear appropriate.”**

[emphasis supplied]

The communication addressed by respondent No.4 to respondent No.1, however, did not invoke any response.

11. The writ petition was heard and dismissed on 31.3.2017 by the Division Bench. It is this order which is sought to be assailed in the present appeal. The impugned order records that the appellant was not granted pension in view of the alleged non-compliance of Clause 22(2) of the Syndicate Bank Employees' Pension Regulations, 1995 (hereinafter referred to as ‘Pension Regulations’) as he was required to join back the service of the bank on being relieved from the DRT on 27.1.2006 but he straight away joined the post of the Presiding Officer of the DRT, Lucknow. The period from 28.1.2006 was treated as willful abandonment of service. The relevant extract of the Pension Regulations reads as under:

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- A **"22. Forfeiture of Service:-**
- (1)
- (2) An interruption in the service of a Bank employee entails forfeiture of his past service, except in the following cases, namely-"
- B 12. The impugned order recognizes that 'No Objection Certificate' to participate in the selection process had been obtained by the appellant but the fact that he joined the post of the Presiding Officer, DRT without reporting to his parent department was considered fatal. The conduct of the appellant was held to be treated as abandonment of bank service.
- C 13. We have examined the submissions advanced by learned counsel for the appellant and learned counsel for respondent No.1 in the contours of the aforesaid factual position. In our view, the impugned decisions of the respondent No.1 Bank are wholly unjustified and unsustainable in law even as per the Pension Regulations.
- D 14. The appellant was on deputation from time to time. Before applying for the post of Presiding officer, DRT, a 'No Objection Certificate' had been obtained from the respondent No.1 Bank. The period of deputation of the appellant was extended keeping in mind the fact that he had already applied for the post and his application was
- E pending consideration. It is during the extended period that the appellant was issued the appointment letter on 20.1.2006. To say the least, it is a hyper technical view to take that the appellant ought to have joined the respondent No.1 Bank for a couple of days, got himself relieved and then joined the office of the Presiding Officer, DRT. It, thus, appears to
- F be more of an ego issue rather than any case of service impropriety or illegality. The appellant even took the precaution to write a letter on 25.1.2006 to respondent No.1 Bank for permission to take over charge of the new post of Presiding Officer which post he had to occupy within a period of one month as stated aforesaid from the date of issue of letter dated 20.1.2006. This letter received no response for 11 months, a clear
- G laxity on the part of the respondent No.1 Bank. The appellant, thus, joined the post of the Presiding Officer. No shadow whatsoever can be cast over the conduct of the appellant in this behalf.
- H 15. Now, turning even to the so called technicality of the appellant based on Clause 22(2) of the Pension Regulations, the same requires

any interruption in service of a Bank employee to entail forfeiture of his past service. In our view, there was no interruption of service of the Bank employee as would cause such forfeiture. The appellant was on deputation when he was so appointed and took over the new post. The fact that he did not report back to the Bank for a couple of days, got himself relieved and then joined the post cannot be categorized as ‘interruption in service’ by any stretch of imagination. As noticed above, the appellant had already addressed a communication to respondent No.1 Bank on 25.1.2006 which elicited no response for 11 months. We may also add that even the Ministry of Finance, the parent Ministry of respondent No.1 Bank, brought to the notice of the Bank the inappropriateness of not extending the benefits by commenting, as extracted aforesaid. It has been noted that there was no communication from the Bank after issue of appointment letter dated 20.1.2006 and notification dated 9.2.2006 till the matter was raised with the Ministry for the first time by the Bank after a gap of more than 6 months on 17.7.2006.

16. It is unfortunate that such a stand was sought to be taken by the Bank resting on unjustified ego of someone, causing immense suffering to the appellant. We are, thus, of the view that the impugned orders in the Writ Petition No.947(SB)/2010 and orders issued by respondent No.1 Bank are unsustainable and are, accordingly, quashed. The Writ Petition filed by the appellant before the High Court is liable to be allowed and the impugned order of the Division Bench set aside. Appeal is allowed.

17. We also consider it appropriate to impose costs on the respondent No.1 Bank, in view of what we have discussed aforesaid, quantified at Rs.25,000/- The amount due to the appellant alongwith interest, as per norms, and the cost imposed be remitted to the appellant by Respondent No.1 within a maximum period of 2 months from today.