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*Before Swatanter Kumar & S.S. Saron, JJ*

T.S. GANDHOK— *Petitioner*

*versus*

PUNJAB & SIND BANK & OTHERS—*Respondent*

C.W.P. No. 13322 of 2000

14th November, 2002

*Constitution of India, 1950—Art.226—Punjab and Sind Bank (Officers) Service Regulations, 1982—Regs. 20(2) & (3), 21 & 29—Continuous absence from duty—Rejection of the request for voluntary retirement as the Officer had not completed the requisite qualifying service—Officer failing to submit a notice expressing his intention to leave or discontinue his service or resign as required under Reg. 20(2)—Merely because he cannot get voluntary retirement on account of the fact that he did not have the requisite qualifying service, it cannot be said that the same may be treated as an intention to resign within the meaning of Reg. 20(2)—Request for treating the letter of voluntary retirement as resignation only to avoid disciplinary action contemplated for absents from duty—Writ dismissed while permitting the Bank to hold the enquiry against the Officer in accordance with the Regulations.*

Held, that the letter for seeking voluntary retirement cannot be taken to be a notice expressing intention to leave or discontinue his service or resign within the meaning of Regulation 20(2). The language of Regulation 20(2) is quite clear that the Officer intending to leave or discontinue the service of the Bank is to first give notice in writing of his intention. There is no such intention to leave the service of the Bank. The plea as taken by the petitioner for treating his notice for voluntary retirement as a notice of intention to leave or discontinue the service is clearly with a view to avoid disciplinary action which was being contemplated at that stage.

(Para 12)

Further held, that the petitioner was aware of the contemplated disciplinary action against him as he had been continuously absenting

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himself from duty. The notice of voluntary retirement submitted on 12th January, 1997 was only to avoid disciplinary action against him. A reading of Regulation 20(3) also shows the intention of the Regulations that the same have been framed with a view to curb the tendency of the employees to avoid disciplinary proceedings by either resigning or seeking voluntary retirement. The technical plea that no disciplinary proceedings were pending on the date of submission of notice on 12th January, 1997 is inconsequential in the circumstances as the petitioner was aware of the contemplated disciplinary proceedings. It is for this purpose and to meet such eventualities that Regulation 20(3) has been framed.

(Para 15)

H.C. Arora, Advocate for the petitioner.

G.S. Sathi, Advocate for the respondent.

### JUDGEMENT

*S.S. SARON J.*

(1) The present petition has been filed for quashing the charge-sheets dated 24th March, 1999 and 16th June, 2000 Annexures P-7 and P-8 respectively on the ground that the same have been issued without jurisdiction and that the petitioner had already left the service of the respondent Punjab and Sind Bank on account of his resignation submitted on 23rd May, 1997 and the same having deemed to have been accepted in view of the provisions of Regulation 20(2) and (3) of the Punjab and Sind Bank (Officers) Service Regulations, 1982 (hereinafter to be referred as the Regulations). The petitioner also claims the relief of his terminal dues i.e. gratuity, provident fund etc. along with interest at the rate of 18% p.a. for the period of delay in making the payment.

(2) The facts leading to the case are that the petitioner was working as Manager, Punjab & Sind Bank. He in terms of letter dated 12th January, 1997 Annexure P-1 sought voluntary retirement from service of the Bank on the ground that he had not been keeping good health for the last several months. No response to the notice dated 12th January, 1997 Annexure P-1 was received. The petitioner treated the notice as having been accepted by the respondent Bank in

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accordance with Regulation 20. Accordingly the petitioner submitted a representation dated 12th April, 1997 Annexure P-2 indicating therein that the period of three months had already lapsed from the submission of his request for voluntary retirement and, therefore, he is deemed to have retired from service of the Bank in terms of the provisions of Regulation 20 of the Regulations. The respondent-Bank, however, had issued a letter dated 11th April, 1997 Annexure P-3 with reference to the application of the petitioner for voluntary retirement informing him that he had not completed 20 years of qualifying service in terms of Regulations 21 and 29 of the Regulations and as such his request for voluntary retirement had not been acceded to by the competent authority. The petitioner thereafter submitted a detailed representation dated 23rd May, 1997 Annexure P-4 containing therein that he had in fact completed period of 20 years of service as on 9th April, 1997. However, in case he does not qualify for voluntary retirement, then his letter dated 12th January, 1997 Annexure P-1 be treated as resignation and he may be relieved accordingly with effect from 11th April, 1997 on account of his continuous illness. It is the case of the petitioner that at the time of submitting representation dated 23rd May, 1997 Annexure P-4, no disciplinary proceedings were pending against him. Thereafter, he submitted representation dated 12th November, 1998 Annexure P-5 requesting for the payment of his retiral dues. In response to the same, the respondent-Bank addressed letter dated 4th December, 1998 Annexure P-6 and informed him that his resignation had not been accepted and as such his absence from duty has been considered as unauthorised. He was advised in his own interest to join duty immediately failing which disciplinary action would be initiated against him.

(3) Thereafter the respondent-Bank issued him impugned charge-sheet dated 24th March, 1999 Annexure P-7 alleging that the petitioner had used his official position to avail housing loans of Rs. 80,000 on 3rd October, 1988 and Rs. 20,000 on 6th January, 1989 without depositing title deeds of the property and he also did not repay the loan by getting deductions made from his salary. Subsequently second charge-sheet dated 16th June, 2000 Annexure P-8 has been issued on the allegations that the petitioner had been absenting from duty unauthorisedly since 21st July, 1995. As already noticed above, the petitioner has prayed for quashing the aforesaid charge-sheets.

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(4) Notice of the writ petition was issued to the respondents. The respondents have put in appearance and have filed the written statement. It has been contended that the reasons given in the notice for voluntary retirement were unsubstantiated inasmuch as no medical proof with respect to the illness was furnished. Besides, the notice of voluntary retirement was given with a view to avoid disciplinary action because the petitioner had been unauthorisedly absenting from duty since 21st July, 1995 and,—vide telegram dated 8th August, 1995 he was advised to join duty immediately because his absence was being viewed very seriously. The petitioner was also instructed,—vide registered letter dated 10th January, 1996 to report for duty immediately. Another telegram was sent on 10th January, 1998 advising the petitioner to join duty. Unauthorised absence from duty constitutes a misconduct in terms of Regulation 13 of the Regulations. The copies of the correspondence of the respondents have been placed on record as Annexure R1 to R3. It is contended that there is no provision in the Regulations to the effect that if the request for retirement/resignation is not accepted or rejected within a period of three months from the date of notice, the same is deemed to have been accepted upon the expiry of three months. Even otherwise, the request for voluntary retirement was not accepted by the respondent-Bank,—vide letter dated 11th April, 1997 Annexure P-3, as the petitioner had not completed 20 years of qualifying service. Due intimation in this regard was given to the petitioner and decision had been taken before the expiry of three months. Besides, it is contended that the petitioner had earlier filed C.W.P. No. 6975 of 1996 which was ordered to be admitted for regular hearing,—vide order dated 15th May, 1996 and that he had also filed a similar writ petition challenging the order dated 11th April, 1997 Annexure P-3 which was dismissed as withdrawn and that the petitioner has not given any detail about the said petition.

(5) The petitioner by way of replication has submitted that in fact he had filed C.W.P. No. 7217 of 1997 which was dismissed on 23rd May, 1997 and that on his contention that he completed 20 years of service as on 9th April, 1997, liberty was given to him to file a representation to the authority concerned who were to dispose of the same by passing a speaking order within four months thereafter.

(6) The learned counsel for the parties have been heard. The learned counsel appearing for the petitioner has submitted that the

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primary case of the petitioner is for quashing the impugned charge-sheets dated 24th March, 1999 Annexure P-7 and 16th June, 2002 Annexure P-8. He has contended that in fact the petitioner is deemed to have voluntarily retired after the submission of his request for the same,—vide letter dated 12th January, 1997 Annexure P-1 inasmuch as the respondents took no action on the representation for a period of three months. In support of his contention he has placed reliance on the judgement of the Hon'ble Supreme Court in the case titled *State of Haryana versus S.K. Singal (1)*.

(7) As against this, the learned counsel for the respondent-bank contends that the submission of request for voluntary retirement and subsequent request for treating the voluntary retirement as resignation were only a ruse to avoid disciplinary proceedings as the petitioner had been unauthorisedly absenting himself from duty since 21st July, 1995 and despite telegram dated 8th August, 1995, registered letter dated 10th January, 1996 and another telegram dated 10th January, 1996 Annexure R1 to R3 respectively, he did not join duty.

(8) In order to appreciate the respective stand of the parties, it is necessary to make a reference to the provisions of Regulation 20 of the Regulations. Regulation 20(1) relates to termination of service by the Bank. Insofar as the discontinuation of service by employee are concerned, Regulation 20(2) and (3) are opposite which read as under :—

“(2) An officer shall not leave or discontinue his service in the Bank without first giving a notice in writing of his intention to leave or discontinue his service or resign. The period of notice required shall be 3 months and shall be submitted to the Competent Authority as prescribed in these regulations. Provided further that the Competent Authority may reduce the period of 3 months, or remit the requirement of notice.

.. (3) (i) An officer against whom disciplinary proceedings are pending shall not leave/discontinue or resign from his service in the bank without the prior approval in writing of Competent Authority and any notice or resignation given by such an officer before or during

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the disciplinary proceedings shall not take effect unless it is accepted by the Competent Authority.

- (ii) Disciplinary proceedings shall be deemed to be pending against any employee for the purpose of this regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceeding shall not be instituted against him and will be deemed to be pending until final orders are passed by the Competent Authority.
- (iii) The officers against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF.”

(9) Insofar as the contention of the petitioner with regard to his deemed retirement is concerned, it may be mentioned that a Division Bench of this Court on 23rd May, 1997 (Annexure P-9) in the earlier writ petition i.e. C.W.P. No. 7217 of 1997 filed by the petitioner, challenging the order dated 11th April, 1997 Annexure P3, whereby his request for voluntary retirement had been declined on the ground that he had not completed 20 years of qualifying service in terms of Regulations 21 and 29 of the Punjab & Sind Bank Employees Pension Regulations 1995, passed the following order :—

“Mr. H.C. Arora, Advocate.

This petition is dismissed. We have gone through the Regulations 21 and 29 and are of the opinion that the petitioner has not completed his qualifying service when he sought premature retirement. Mr. Arora states that w.e.f. 9th April, 1997 the petitioner has completed 20 years of his service. If that being so, the petitioner may file a representation to the authorities concerned, who shall

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dispose of the same by passing a speaking order within four months thereafter.”

(10) In this view of the matter, the reliance placed by the learned counsel for the petitioner on the judgment of the Apex Court in *State of Haryana versus S.K. Singal* (supra) is without any force. In the said case, the employee had given a notice dated 16th August, 1995 seeking voluntary retirement. The competent authority passed an order that the employee could not be deemed to have voluntarily retired w.e.f. 16th November, 1995 after the expiry of three months. The Hon'ble Supreme Court in terms of the proviso to sub clause (2) of Rule 5.32 B of the Punjab Civil Service Rules (Volume II) held that the same contemplates a notice to retire and not a request seeking premature retirement. The claim of the employee therein of his having deemed to have retired was accepted. It was not the case of the employee therein that he had not completed the requisite qualifying service for seeking retirement. Whereas in the case in hand, the petitioner has admittedly not completed the requisite qualifying service to be eligible for seeking voluntary retirement and this had already been adjudicated upon by this Court,—*vide* order dated 23rd May, 1997 referred to above.

(11) In view of the above said order, the contention of the petitioner that he is deemed to have retired on the alleged expiry of three months from the date of submission of the request for voluntary retirement,—*vide* letter dated 12th January, 1997 Annexure P1 is without any force. The petitioner has not been able to assail the averment of the respondents that he had not completed the requisite qualifying service when he sought voluntary retirement. Besides, this Court in terms of the afore-referred order dated 23rd May, 1997 has already held that the petitioner had not completed his qualifying service when he sought premature retirement.

(12) The question, therefore, now to be seen is whether the said letter dated 12th January, 1997 Annexure P1 can be treated as a resignation and whether the petitioner can claim that he is entitled to be relieved with effect from 11th April, 1997 on account of his continuous illness. A perusal of regulation 20(2) as reproduced above provides that an officer shall not leave or discontinue his service in the Bank without first giving notice of his intention to leave or

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discontinue his service or resign. The period of notice is required to be three months and is to be submitted to the competent authority. It is not the case of the petitioner that he had submitted a notice expressing his intention to leave or discontinue his service. The petitioner has submitted a notice dated 12th January, 1997 Annexure P1 expressing his intention to seek voluntary retirement. The case was considered by the respondent-Bank in accordance with procedure and,—*vide* order dated 11th April, 1997 the petitioner was informed that he did not complete 20 years of qualifying service and as such his request for voluntary retirement has not been acceded to. The petitioner admittedly has not given any notice expressing his intention to leave or discontinue his service or resign. Had such a notice been given, the case of the petitioner would have been considered by the respondent-Bank in accordance with policy instructions and other relevant facts and circumstances. Merely because the petitioner cannot get voluntary retirement on account of the fact that he did not have the requisite qualifying service in terms of Regulations 21 and 29 of the Regulations, it cannot be said that the same may be treated as an intention to leave or discontinue his service or resign within the meaning of Regulation 20(2). It is after the receipt of letter dated 11th April, 1997 Annexure P3 that the petitioner submitted a representation 23rd May, 1997 Annexure P4 in which he stated that in case he does not qualify for voluntary retirement, then his letter dated 12th January, 1997 Annexure P-1 may be treated as resignation and he may be relieved accordingly with effect from 11th April, 1997 on account of his continuous illness. The letter for seeking voluntary retirement in our view cannot be taken to be a notice expressing intention to leave or discontinue his service or resign within the meaning of Regulation 20(2). The language of Regulation 20(2) is quite clear that the officer intending to leave or discontinue the service of the Bank is to first give notice in writing of his intention. There is no such intention to leave the service of the Bank. The plea as taken by the petitioner for treating his notice for voluntary retirement as a notice of intention to leave or discontinue the service is clearly with a view to avoid disciplinary action which was being contemplated at that stage.

(13) In *Central Inland Water Transport Corporation Ltd. versus Brojo Nath Ganguly*, (2) which case related to an employee of a Government Company jointly and wholly owned by the Central Government and two state companies, it was observed as follows :—



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“A resignation by an employee would, however, normally require to be accepted by the employer in order to be effective. It can be that in certain circumstances an employer would be justified in refusing to accept the employee’s resignation as, for instance, when an employee wants to leave in the middle of a work which is urgent or important and for the completion of which his presence and participation is necessary. An employer can also refuse to accept the resignation when there is a disciplinary inquiry pending against the employee. In such a case, to permit an employee to resign would be to allow him to go away from the service and escape the consequences of an adverse finding against him in such an inquiry. There can also be other grounds on which an employer would be justified in not accepting the resignation of an employee.”

(14) The above case though relates to a pending enquiry, however, the intention is that the employee should not be allowed to resign and escape the enquiry where it is contemplated. In the circumstances, as already noticed above the petitioner was aware of the likelihood of the departmental enquiry.

(15) It is the case of the respondent-Bank that the petitioner had been unauthorisedly absenting himself from duty since 21st July, 1995. A telegram dated 8th August, 1995 Annexure R1 was issued to the petitioner asking him to join his duty immediately and that his absence was unauthorised and was viewed seriously. Thereafter the petitioner was also informed,—*vide* letter dated 10th January, 1996 Annexure R2 instructing him to report for duty otherwise his absence would be treated as unauthorised. This was followed by another telegram dated 10th January, 1996 in respect of which confirmation through post was also sent advising the petitioner to join duty. He was informed that his absence was treated as unauthorised and in terms of Regulation 13 it constitutes a misconduct. In this view of the matter, we are of the view that the petitioner was aware of the contemplated disciplinary action against him as he had been continuously absenting himself from duty. The notice of voluntary retirement submitted on 12th January, 1997 was only to avoid

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disciplinary action against him. A reading of Regulation 20(3) also show the intention of the Regulations that the same have been framed with a view to curb the tendency of the employees to avoid disciplinary proceedings by either resigning or seeking voluntary retirement. The technical plea urged by the petitioner that no disciplinary proceedings were pending on the date of submission of notice on 12th January, 1997 is inconsequential in the circumstances as the petitioner was aware of the contemplated disciplinary proceedings. It is for this purpose and to meet such eventualities that Regulation 20(3) has been framed.

(16) In terms of charge-sheet dated 24th March, 1999 Annexure P-7 the petitioner had availed housing loan of Rs. 80,000 on 3rd October, 1998 and Rs. 20,000 on 6th January, 1989 without depositing the title deed of the plot where the house was to be constructed. He also did not get his salary deducted towards the repayment of housing loan. It has been contended that the above said act *prima facie* amounts to serious misconduct in terms of Regulation 3(i) and 3(ii) of the Regulations. Besides, in terms of the charge-sheet dated 16th June, 2000 Annexure P-8, the allegations are that the petitioner has been absenting from duty and he did not seek prior permission from the competent authority for any sort of leave. The respondent-Bank is entitled to conduct the enquiry in accordance with Regulations to substantiate the same against the petitioner. The petitioner is also entitled to participate in the enquiry and prove his innocence. He cannot avoid the disciplinary proceedings on the pretext that he has submitted letter for voluntary retirement which has not been acceded to. The same cannot under any circumstances be taken to be a notice expressing intention on the part of the petitioner to leave or discontinue the Bank service or resign within the ambit of Regulation 20(2).

(17) In view of the above, we find no merit in this writ petition and the same is accordingly dismissed. There shall, however, be no order as to costs.

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**R.N.R.**