

THE REGIONAL MANAGER, CENTRAL BANK OF INDIA

v.

VIJAY KRISHNA NEEMA & ORS.

(Civil Appeal No. 2242 of 2009)

APRIL 8, 2009

[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

Service law: Clause 16 of Shastri Award – Absence from duty – Notice to employee to report for duty – Requirement of – Held: In case of absent employee, notice is required to be served by registered post with acknowledgment due – On facts, there is nothing to show that the fact of change of address of employee was not known to employer – High Court arrived at a finding of fact that notice was not served upon him and since he had in his credit 236 days leave, he was entitled to continuity of service – In the facts and circumstances of the case, interference under Article 136 of the Constitution not called for – Constitution of India, 1950 – Article 136.

The Respondent was employed in appellant-Bank. He took extension of leave without permission. Two memos were issued which were returned to bank with an endorsement 'refused'. As he did not join duty, show cause notice was issued as to why disciplinary proceeding be not initiated against him. Respondent filed a representation upon receipt of the said notice. Respondent was however informed that he had ceased to be in employment of bank having voluntarily abandoned the service. Respondent filed appeal which was dismissed on the ground that the termination of service was in accordance with the provisions of Bipartite settlement (Shastri Award) and there was no violation of rules of natural justice. Respondent filed Writ Petition before High Court. It held that the appellant had in his credit 236 days leave; that respondent had submitted an

A application for change of address, however, bank did not send notice on this address, nor tried to serve the notice personally on him and therefore the rules of natural justice were not complied with and thus respondent was entitled to continuity of service. Hence the appeal.

B Dismissing the appeal, the Court

C HELD: 1.1. An employee may, in certain situations, abandon or deemed to have abandoned his job. What constitutes abandonment may be a matter of a statutory provision or agreement between the employer and the Union. Although absence without leave for a long time may constitute a grave misconduct on the part of the employee concerned, in a case of this nature, in view of clause 16 of the Shastri Award, an employee can be treated to have ceased from employment. [Para 14] [656-B]

E *Viveka Nand Sethi v. Chairman, J & K Bank Ltd. (2005) 5 SCC 337; Punjab & Sind Bank & Ors. v. Sakattar Singh 2001 (1) SCC 214; Syndicate Bank v. General Secretary, Syndicate Bank Staff Association and Anr. (2000) 5 SCC 65 and New India Assurance Co. Ltd. v. Vipin Behari Lal Srivastava (2008) 3 SCC 446, referred to.*

F 1.2. Principle of natural justice, it is trite, does not operate irrespective of the statutory provisions. Clause 16 of the Shastri Award provides for issuance of such notice. If despite service of notice the employee did not report for duty, the consequences therefor would ensue. [Para 15] [657-D, E]

G *Uptron India Ltd. v. Shammi Bhan & Anr. (1998) 6 SCC 538 and Scooters India Ltd. v. M. Mohd. Yaqub (2001) 1 SCC 61, referred to.*

H *V.C., Banaras Hindu University & Ors. v. Shrikant (2006)*

11 SCC 42 and *D.K. Yadav v. JMA Industries Ltd.* (1993) 3 SCC 259, referred to. A

1.3. In case of an absent employee notice was required to be served by registered post with acknowledgment due. The High Court arrived at a finding of fact that notice, in fact, was not served upon him. Appellant merely produced a photostat copy of the envelop. There was nothing to show that the notice was sent under registered cover with acknowledgment due. Furthermore, there is nothing to show that the fact that the respondent has changed his address was not known to the officers of the bank. The shifting of the residence by the respondent was not denied. In fact, the subsequent event, namely, filing of a suit for recovery of amount of loan from the respondent clearly suggested that officers of the appellant were aware of the respondent's changed address. Moreover, a concurrent finding of fact in regard to the non-service of notice has been arrived at. High Court furthermore gave liberty to the appellant to give an opportunity of hearing to the respondent. The respondent was working in the bank since 2004. In the facts and circumstances of this case, it is not a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India. [Para 16] [659-G, H; 660-A; 660-B-E] B C D E F

2. The appellant raised contention that the respondent had started business in the name of Builders and Brokers. The said fact was sought to prove from the greeting cards sent to the officers of the bank on the occasion of Diwali. Although the said plea was required to be taken into consideration by the High Court, it is not necessary to go into the said question as in view of the fact that the respondent has already been reinstated in service. [Para 17] [660-F] G H

- A *U.P. State Bridge Corpn. Ltd. v. U.P. Rajya Setu Nigam S. Karamchari Sangh* (2004) 4 SCC 268, referred to.

Case Law Reference:

	(2005) 5 SCC 337	referred to	Para 14
B	(2001 (1) SCC 214	referred to	Para 14
	(2000) 5 SCC 65	referred to	Para 14
	(2008) 3 SCC 446	referred to	Para 14
C	(1998) 6 SCC 538	referred to	Para 15
	(2001) 1 SCC 61	referred to	Para 15
	(2006) 11 SCC 42	referred to	Para 15
	(1993) 3 SCC 259	referred to	Para 15
D	(2004) 4 SCC 268	referred to	Para 15

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2242 of 2009.

- E From the Judgment & Order dated 16.10.2006 of the High Court of Judicature at Madhya Pradesh, Bench at Indore in Writ Petition No. 322 of 2006.

Jaideep Gupta, Dinesh Mathur for the Appellants.

- F Saurabh Jain (for Rameshwar Prasad Goyal), Niraj Sharma and Vikrant Singh for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

- G 2. Application of Clause 16 of the Shastri Award is in question in this appeal which arises out of a judgment and order dated 16.10.2006 passed by a Division Bench of the High Court of Madhya Pradesh at Indore in Writ Appeal No.322 of 2006 whereby and whereunder a judgment and order dated
H 29.10.2004 passed by a learned Single Judge of the said

Court in writ petition No.521 of 2004 was affirmed.

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3. Respondent has admittedly been in employment of the appellant bank since 1973. On or about 22.7.1986, he had taken four days' leave upto 25.7.1986. He extended his leave from 26.7.1986 to 1.8.1986. He neither joined his services nor filed any further application for extension of leave.

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Two memos dated 4/5.8.1986 and 18.8.1986 were issued. A letter dated 13.10.1986 was thereafter issued which was returned to the bank with an endorsement 'Refused'. The said letter reads as under :

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"With Reference to our office letters dated 5.8.1986, 18.8.1986 requesting to submit proper leave application and reasons of remaining absent from the Bank.

Mr. V.K. Neema has not submitted any application after 2.8.1986 and reasons of his remaining absent from the duties.

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Mr. V.K. Neema is hereby advised to report for duties immediately and submit the reasons of his absence from the bank. Within three days, failing which disciplinary action will be taken against him."

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4. As he did not join his duties, a show-cause notice dated 9.2.1987 was issued as to why a disciplinary proceeding shall not be initiated against him, stating :

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"Attention of Shri V.K. Neema Clerk is drawn that he applied for 4 days leave from 22.7.86 to 25.7.86 and thereafter extended the leave for 26.7.86 to 1.8.86. After expiry of the said period Shri V.K. Neema, neither reported for duty nor submitted any leave application for any reason whatsoever.

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Vide our letters dated 5.8.86, 18.8.86 and 13.10.86 Mr. Neema was advised to report for duty immediately and to submit the reasons of his absence from the bank within

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A days Mr. V.K. Neema did not comply with the instruction and he refused to accept our letter dated 13.10.1986 which was sent at his residence address by Regd. Post.

B In the circumstances, Bank has reason to believe that he has no intention of continuing in the services of the Bank. However, he is once again called upon to report for duty at our Branch within 30 days of this letter and submit his explanation for his unauthorized absence from 2.8.86. If he fails to report for duty within the period stipulated above, it will be deemed that he has voluntarily retires from the service of the Bank on the expiry of said period of 30 days and his name will be struck off from the Rolls of the Bank, and the bank will take suitable action to recover its dues.”

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D 5. Respondent filed a representation upon receipt of the said notice.

E 6. By reason of an order dated 6.4.1987, respondent was informed that he had ceased to be in the bank's employment with effect from 9.3.1987 having voluntarily abandoned the service.

F Indisputably, respondent had taken some loan from the bank, he had shifted from 192, Jawahar Marg, Indore to 62, Vandana Nagar, Indore. A recovery suit was filed by the bank wherein the address of the respondent was stated as 62, Vandana Nagar, Indore.

G 7. Respondent also preferred an appeal on 2.5.1987 against the said order dated 6.4.1987. He thereafter filed a writ petition before the High Court of Madhya Pradesh, Indore Bench, Indore which was marked as W.P. 586 of 1988. By reason of an order dated 22.4.1997, the said writ petition was disposed of by the High Court, observing :

H “However, it has not been disputed before me, that Annexure-G, an appeal has not been disposed of by the Respondents in accordance with law. It has further not

been disputed that against the Order passed by Respondents (Annexure-A and E), an appeal would lie to Zonal Manager in terms of clause 19.14 of the Bi-partite Settlement.”

The High Court opined :

“Thus, on totality of the circumstances, as mentioned above, I deem it fit to direct the Respondents to treat Annexure-G/dt.2.5.1987, as an appeal, addressed to Zonal Manager of Respondent No.1, in terms of Clause 19.14 of Bipartite Settlement, and direct the Respondent No.1 to place it before the Zonal Manager for deciding the same in accordance with law on merits, as expeditiously as may be possible. It is expected to the Respondents to consider all points raised by Petitioner in Memo of Appeal and that the same would be decided by a reasoned Order.

In case Petitioner makes a prayer for personal hearing, then, the same be also considered in the light of Rules and Regulations applicable the service condition of Petitioner and also in the light of peculiar facts and circumstances of the case.”

8. Pursuant thereto or in furtherance thereof, the appellate authority treated the appeal preferred before the Deputy General Manager, Zonal Office, Bhopal as a departmental appeal. He was given an opportunity of hearing. The Appellate Authority by an order dated 24.10.1997 dismissed the said appeal, opining :

“The contention of the applicant that all written communications were determinately (sic) to the where he was not residing is not acceptable. From the fact that the appellant has availed housing loan facility from the Bank, it cannot be construed that he started residing there, unless there was specific information to Bank about the usage of house. Besides, the fact and reason of the letters

A were not accepted by him he was aware of various communication intimation from the Branch.

B The undersigned further observe that issuance of show cause notice dated 9.2.87 by the Branch Manager was in order having been issued in the capacity of administrative need. It does not therefore, amount to violation whatsoever.

C The termination of the petitioner's service, it is observed, was in accordance with the provisions of Bi-partite settlement. As such, non-conduct of departmental authority does not vitiate the action taken thereto."

D 9. A second writ petition was filed by the respondent questioning the legality and/or validity of the said order. By reason of a judgment and order dated 29.10.2004, a learned Single Judge of the said Court allowed the writ application, *inter alia*, opining :

E "From the above factual position, it is clear that there was a 236 days leave in the credit of the petitioner, it cannot be inferred safely that the notice was served to the petitioner and he was afforded an opportunity of hearing or submitting any explanation. It is further clear from the facts that the petitioner had an explanation about his absence on account of his ailment he had 236 days leave in his credit. In such circumstances the rule of natural justice cannot be by-passed."

It was furthermore held :

G "From the above discussion it is clear that the petitioner has in his credit 236 days leave. He further has an explanation to put forth before the management with regard to his ailment which was supported by the medical certificate. He has also submitted an application for his change of address 62, Vandana Nagar, Indore. Admittedly, on this address the notice was not sent by the Bank. The Bank has not tried to serve the notice personally

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to the petitioner. In such circumstances the rule of natural justice cannot be ruled out and it cannot be said and the decision of the Bank with regard to abandonment of service voluntarily has rightly been taken after compliance of the rule of natural justice.” A

The writ petition was allowed, directing : B

“The impugned order Annexure – P/5 dated 6.4.1987 by which it is held that the petitioner ceased to be in Bank employment with effect from 9.3.1987 and the appellate order Annexure P/16 dated 24.10.1997 are hereby quashed. C

In consequence the petitioner be deemed to be in service with the Bank. It is further made clear that the respondent Bank is free to hold a departmental regular enquiry and pass appropriate order if it wishes so. The petitioner will not be entitled for backwages in the facts and circumstances of the case at present but will be entitled for continuity of service. However, the respondent is free to decide the question of backwages after the outcome of the departmental enquiry.” D E

10. Mr. Jaideep Gupta, learned senior counsel appearing on behalf of the appellant, would submit :

(1) The learned Single Judge committed a serious error in so far as it failed to take into consideration that for invoking clause 16 of the Shastri Award, personal service of notice was not imperative as the same could be effected by registered post with acknowledgment due. F G

(2) As the respondent did not join his services despite service of notice, it was not necessary for the appellant to initiate any departmental proceedings.

(3) Validity of clause 16 having been upheld in a large H

A number of decisions of this Court, the High Court committed a serious error in passing the impugned judgment.

B (4) In any event, respondent having started his own business, the High Court committed a serious error in directing his reinstatement in his service.

11. Mr. Niraj Sharma, learned counsel appearing on behalf of the respondent, on the other hand, would urge :

C (i) In view of the concurrent finding of fact arrived at by two courts that 236 days' leave was due to the respondent, clause 16 of Shastri Award was not attracted and, thus,, this Court should not interfere with the impugned judgment.

D (ii) Service of notice upon the respondent asking him to join his services having not been proved, as has been held by the learned Single Judge, the impugned judgment does not warrant interference.

E (iii) In any view of the matter as the learned Single Judge had given an opportunity for initiating a departmental proceeding against the respondent to the appellant and having regard to the fact that since 2004, the respondent had been working in the bank and furthermore as during the said period, no departmental proceeding has been initiated, this Court may not exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

G 12. Clause 16 of the Shastri Award reads as under :

H "Where an employee has not submitted any application for leave and absented 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 days or more consecutive days beyond the period of leave originally

sanctioned or subsequently extended or where there is satisfactory evidence that he has taken unemployment in India or 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 thirty 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 employees reports for duty within thirty 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 thirty 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 services."

13. The said award provides for the mode and manner in which service of notice shall be effected in the following terms:

"Issue of notices and orders :- Notices which are required to be given shall be served individually on the employees affected and their acknowledgments taken, and shall also be exhibited on the notice boards of the bank at the offices or establishments concerned. Such notices as are so exhibited shall be in English and also in the principal language of the district or locality in which each such office or establishment is situated. Any notice, order, charge-sheet, communication or intimation which is meant for an individual employee shall be in a language understood by the employee concerned. In the case of an absent employee notice shall be sent to him by registered post, with acknowledgment due."

A 14. The question as regards validity of Clause 16 of Shastri Award and/or provisions akin thereto is no longer *res integra*.

B An employee may, in certain situations, abandon or deemed to have abandoned his job. What constitutes abandonment may be a matter of a statutory provision or agreement between the employer and the Union. Although absence without leave for a long time may constitute a grave misconduct on the part of the employee concerned, in a case of this nature, in view of clause 16 of the Shastri Award, an employee can be treated to have ceased from employment.

C In *Viveka Nand Sethi v. Chairman, J & K Bank Ltd.* [(2005) 5 SCC 337], this Court, *inter alia*, relying upon the decision of this Court in *Punjab & Sind Bank & Ors. v. Sakattar Singh* [(2001 (1) SCC 214)] and *Syndicate Bank v. General Secretary, Syndicate Bank Staff Association and Anr.* [(2000) 5 SCC 65], held as under :

E “15. 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, that 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 had no intention of not joining his duties.

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20. 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 with the requirements of the principles of natural justice.”

The same view was reiterated by this Court in *New India Assurance Co. Ltd. v. Vipin Behari Lal Srivastava* [(2008) 3 SCC 446].

15. Principle of natural justice, it is trite, does not operate irrespective of the statutory provisions.

It was not a case where like *Uptron India Ltd. v. Shammi Bhan & Anr.* [(1998) 6 SCC 538] and *Scooters India Ltd. v. M. Mohd. Yaqub* [(2001) 1 SCC 61], no notice was required to be issued.

Clause 16 of the Shastri Award provides for issuance of such notice. If despite service of notice the employee did not report for duty, the consequences therefor would ensue.

In *V.C., Banaras Hindu University & Ors. v. Shrikant* [(2006) 11 SCC 42], upon referring to *D.K. Yadav v. JMA Industries Ltd.* [(1993) 3 SCC 259, *Uptron India Limited (supra)* and *Scooters India Ltd. (supra)*, it was opined :

“57. The matter may, however, be different in a case where despite having been given an opportunity of hearing, explanation regarding his unauthorised absence is not forthcoming or despite giving him an opportunity to join his duty, he fails to do so, as was the case in *Punjab & Sind Bank v. Sakattar Singh.*”

A This Court upon considering *Vivek Sethi* (supra), held as under :

B “60. A provision relating to abandonment of service came up for consideration yet again in *Viveka Nand Sethi v. Chairman, J&K Bank Ltd.* before a Division Bench of this Court. This Court opined that although in a case of that nature, principles of natural justice were required to be complied with, a full-fledged departmental enquiry may not be necessary, holding:

C “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 with the requirements of the principles of natural justice.”

D 61. Mr. Dwivedi placed strong reliance upon the decision of this Court in *Aligarh Muslim University v. Mansoor Ali Khan*. In that case, interpretation of Rule 5(8)(ii) came up for consideration which is in the following terms:

E “5(8)(ii) An officer or other employee who absents himself without leave or remains absent without leave after the expiry of the leave granted to him, shall, if he is permitted to rejoin duty, be entitled to no leave allowance or salary for the period of such absence and such period will be debited against his leave account as leave without pay unless his leave is extended by the authority empowered to grant the leave. Wilful absence from duty after the expiry of leave may be treated as misconduct for the purpose of clause 12 of Chapter IV of the Executive Ordinances of AMU and para 10 of Chapter IX of Regulations of the Executive Council.”

H It was held that a show-cause notice and reply would be

necessary. If no show-cause notice had been given, this Court held that the principles of natural justice would be held to be complied with.”

Yet again in *U.P. State Bridge Corpn. Ltd. v. U.P. Rajya Setu Nigam S. Karamchari Sangh* [(2004) 4 SCC 268], it was held as under :

“23. *D.K. Yadav* is an authority for the proposition that the principles of natural justice would have to be read in the standing orders. That was a case where there was a standing order similar to CSO L-2.12 except that 8 days' margin was granted within which the workman was required to return and satisfactorily explain the reasons for his absence or inability to return after the expiry of leave. This view was reiterated in the later decision of this Court in *Lakshmi Precision Screws Ltd. v. Ram Bahagat* where it was held that the element of natural justice was an inbuilt requirement of the standing orders.

24. In this case, the appellant Corporation had issued two notices calling upon the workmen represented by the respondent to return to duty. The workmen did not respond to either of the notices. As we have noted it was not pleaded that the advertisement did not sufficiently comply with the principles of natural justice. The notice was issued giving an opportunity to the respondent to show cause why the presumption should not be drawn under CSO L-2.12. The respondent did not show cause. In the circumstances, the management drew the presumption in terms of the CSO.”

16. The question which, however, arises for consideration is as to whether the appellant has been able to prove that the notice was served upon the respondent. The High Court, it must be noticed at the outset, committed a serious error in holding that personal service of notice was imperative inasmuch as in case of an absent employee notice was required to be served by registered post with acknowledgment

A due. The learned Single Judge has arrived at a finding of fact that notice, in fact, has not been served upon him. Appellant has merely produced a photostat copy of the envelop. There was nothing to show that the notice was sent under registered cover with acknowledgment due.

B Furthermore, there is nothing to show that the fact that the respondent has changed his address was not known to the officers of the bank. The shifting of the residence by the respondent has not been denied. In fact, the subsequent event, namely, filing of a suit for recovery of amount of loan from the respondent clearly suggests that officers of the appellant were aware of the respondent's changed address. Moreover, a concurrent finding of fact in regard to the non-service of notice has been arrived at.

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D Learned Single Judge had furthermore given liberty to the appellant to give an opportunity of hearing to the respondent. It is also not in dispute that the respondent has been working in the bank since 2004. In the aforementioned facts and circumstances of this case, we are of the opinion that it is not a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

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F 17. It may be true that a contention has been raised by the appellant that the respondent had started business in the name of Builders and Brokers. The said fact was sought to prove from the greeting cards sent to the officers of the bank on the occasion of Diwali. Although the said plea was required to be taken into consideration by the High Court, in our opinion, it is not necessary to go into the said question as in view of the fact that the respondent has already been reinstated in service.
G Appellant would, however, be at liberty to avail the remedies given to it by the High Court.

18. The appeal is dismissed. However, there shall be no order as to costs.

H D.G.

Appeal dismissed.