

**HEADING OF DECISION IN CIVIL SUITS
IN THE COURT OF 1st ADDL.SENIOR CIVIL JUDGE, BHUBANESWAR**

*Present :- Pranab Kumar Routray, LL.,M,
1st Addl. Senior Civil Judge,
Bhubaneswar.*

C.S. No.1456/2010

Sashisekhar Saha, aged about 37 years,
S/o Trivhubhan Prasad Saha,
Residing at Plot No.703, Aryalaya, Unit-8,
Nayapalli, PS-Nayapalli,
Bhubaneswar-12, Dist.Khurda.

... **Plaintiff**

-Versus-

1. Managing Director,
ING Vysya Bank Ltd.
ING Vysya House,
22, M.G. Road,
Bangalore-560001.
2. Chief H.R.
ING Vysya Bank Ltd.
ING Vysya House,
22, M.G. Road,
Bangalore-560001.
3. The Head,
Employee Relations & Disciplinary Authority,
ING Vysya Bank Ltd.,
ING Vysya House,
22, M.G. Road,
Bangalore-560001.

... **Defendants.**

COUNSEL APPEARED

For Plaintiff : Sri S.S.K. Subudhi and associates
For Defendants : Sri H.N. Routray and associates

Date Of Conclusion Of Argument : **22-10-2014**

Date Of Judgment : **14-11-2014**

J U D G M E N T

This is a suit for declaration and for compensation.

2. The case of the plaintiff in brief is that he is a qualified person obtained M.B.A. Degree in Finance from I.C.F.A.I, Hyderabad and was working in different financial institutions till July 2008. He got appointment in I.N.G, Vysya Bank, Rourkela Branch to the post of Branch Head vide letter dtd. 3rd June, 2008. After serving for 20 months in the said Bank his service was confirmed vide letter dtd.11-05-2009 confirming his appointment effective from 01-02-2009. He sent a letter to Regional Head, Kolkata with copy to Zonal Head, North- East Zone on dtd.23-10-2009 relating to the transaction of Rourkela Branch. On 25-11-2009 he clarified certain queries to Sri Krishna Rao D.V., the Fraud Investigating Manager of Head Office, Bangalore. But on 15-02-2010 the plaintiff received show cause notice from Head Employee Relation and Disciplinary Authority, Bangalore wherein four number of lapses have been mentioned to which he submitted reply but on 13-03-2010 the Head, Relation and Disciplinary Authority issued a letter to him stating departmental proceeding has been initiated against him and it has been decided to terminate the contract of his appointment. But, in fact, the Disciplinary Authority has not conducted

Departmental Proceeding as per Rule and made enquiry behind the back of the plaintiff. On receipt of the letter dtd.13-03-2010 the plaintiff submitted appeal but his termination was confirmed by the Appellate Authority and thereafter submitted Review Petition before the Managing Director, ING Vysya Bank Ltd. but the same was outrightly rejected. It is further pleaded that there is Ethics policy for ING Vysya Bank Ltd. and subsidiaries governing all the employees of the bank but in his case the rules and regulations have not been complied while imposing such a major penalty on him. Hence, the plaintiff approached this Court with prayer to declare the letter dtd.13-03-2010 terminating his service issued by defendant no.3 as illegal, null & void and inoperative in the eye of law and to direct the defendants to quash the order of termination and to allow him in service from the date of termination and to get all consequential service benefits from that date and also claims compensation of Rs.50,000/-.

3. The defendants have filed a written statement and challenges that the suit is not maintainable in the eye of law and a sheer abuse of judicial process and there is no cause of action to file the suit and this Court lacks jurisdiction to try the suit. It is also challenged that the plaintiff has suppressed material facts for which he is not entitled to any relief. It is admitted about the plaintiff's appointment in ING Vysya Bank, Rourkela Branch but denied the tenure of 20 months of service of the plaintiff. It is pleaded that the Bank has the option either to take action under the provisions of the contract or

the ING Vysya Bank Employees'(Discipline and Appeal) Regulations, 2003 and in the instant case Bank chose to take action under Ethics policy of the Bank. When it came to the knowledge of Regional Head, Kolkata regarding serious violation of Ethics policy by the plaintiff, a letter dtd.23-10-2009 was issued to the plaintiff intimating such fact. This apart, the Fraud Investigating Manager also requested the plaintiff for clarification regarding violation of Ethics policy. On being satisfied in the investigation, the Head Employee Relation and Disciplinary Authority (defendant no.3) issued show cause notice dtd.15-02-2010 to the plaintiff and thereafter defendant no.3 after perusing all evidences terminated the plaintiff for his misconduct and violation of Ethics policy. It is also admitted about preferring of appeal and review by the plaintiff but the Appellate Authority and Reviewing Authority have upheld the termination. Hence, termination of plaintiff being lawful, it is prayed for dismissal of the suit.

4. In the aforesaid pleadings, the following issues have been framed :

ISSUES

1. Whether the suit is maintainable ?
2. Whether there is cause of action to file the suit ?
3. Whether this Court has jurisdiction to try the suit ?
4. Whether the letter bearing ref. 100-01-ER-609
dtd.13-03-2010 issued by defendant no.3 terminating
the plaintiff from service is lawful ?

5. Whether the plaintiff is entitled for the relief of reinstate in service from the date of termination and to get all consequential service benefits ?
6. Whether the plaintiff is entitled to get compensation as as claimed for ?
7. To what relief(s) the plaintiff is entitled ?

5. The plaintiff has examined himself as the sole witness and exhibited documents vide Exts.1 to 14 list of which appended in the foot of the judgment. On the other hand, the Branch Manger of defendant-bank of Kharavela Nagar, Bhubaneswar Branch has been examined as D.W.1 and one V. Ramanayya Pantulu who was working as Branch Operation and Service Head (BOSH) at Rourkela Branch has been examined as D.W.2 and no document has been brought into evidence from the side of defendants.

With the aforesaid evidence on record the issues as framed are to be answered.

FINDINGS

Issue no.1

6. Considering the peculiar nature of the case and the forceful argument of learned counsel on the maintainability of the suit in Civil Court, this issue is taken up first. It is forcefully argued by learned counsel for the defendants that the plaintiff's service is a contract of personal service and therefore Civil Court has no jurisdiction to entertain the plaintiff's suit for

declaration terminating his service as illegal and reinstatement of service or claim of back-wages. On this point, he relied on a decision reported in AIR 1976 SC 888 between Executive Committee of Vaish Degree College, Shamli and Others.-Vs.-Lakshmi Narain and Others. I carefully perused the said decision of Hon'ble Apex Court and found that Hon'ble Apex Court relying on some earlier decisions reported in (1970) ILLJ 54 SC between Bank of Baroda-Vs.-Jewan Lal Mehrotra, (1970) IILLJ 32 S.C. between Executive Committee U.P. State Warehousing Corporation Ltd.-Vs.-Chandrakiran Tyagi and (1964) ILLJ 1 S.C. between S.R. Tiwary-Vs.-District Board Agra have held that a contract of personal service cannot ordinarily be specifically enforced and the Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employee. However, in the said decision Hon'ble Supreme Court also made three well recognized exceptions : (i) Where a public servant is sought to be removed from service in contravention of provisions of Article 311 of the Constitution of India : (ii) Where a worker is sought to be reinstated on being dismissed under the Industrial Law : (iii) Where a statutory body acts in breach or violation of the mandatory provisions of the statute. It is further held that if the aforesaid three exceptions cannot be found in a particular case then a declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of

specific performance of contract for personal service and therefore, such a declaration is not permissible under the law of Specific Relief Act.

6(a) Some other authorities of law may also be cited to arrive at a just conclusion in the matter. In the case reported in AIR 1991 SC 1525 it is held that “ *a contract of employment cannot ordinarily be enforced by or against an employer, the remedy is to sue for damages.*”

6(b) In the case of J.Tiwary-Vs.-Jawala Devi Mandir and ors. reported in AIR 1981 SC 122 the Hon'ble Apex Court held that “ *when a party is an employee of a private institution and their mutual rights and obligations are governed by the terms of the contract and since under the terms the service of the said party was liable to be terminated, all that the party would be entitled to, even if the dismissal is wrongful, is a decree for damages and not an order of reinstatement or declaration that notwithstanding the termination of services the party continues to be in service.*”

7. From the aforesaid authorities of law it is clear that a contract of personal service cannot ordinarily be specifically enforced and a declaration of unlawful termination and restoration to service is not permissible under the law of Specific Relief Act but subject to three well recognised exceptions. Now it is to be seen whether the plaintiff's service comes under the category of contract of personal service and whether his case falls within the three categories of exceptions.

Considering the appointment letter issued to plaintiff vide Ext.1 and the terms and conditions of his employment attached therewith, his service is a contract of personal service. The plaintiff was working under the defendant-bank which is certainly not a statutory body nor the plaintiff was discharging his duty as public servant nor he is entitled to seek for reinstatement under the Industrial Law. Therefore, the plaintiff being an employee of a private sector has approached this Court for setting aside the order of his dismissal from service, for reinstatement and to get all the consequential service benefits from the date of termination, I am of the earnest view that his suit in this respect does not fall under the three exceptions and hence his suit in that respect is not maintainable. Considering the ratio of the aforesaid cases it is firmly said that even if the dismissal of plaintiff is wrongful, a suit for damage is only maintainable. Hence, the plaintiff's claim for compensation can only be considered. This issue is answered accordingly.

Issue nos.2 and 3

8. It is already held under issue no.1 that Civil Court has no jurisdiction to entertain this suit so far as the prayer for declaration is concerned but as regards to compensation it has got jurisdiction. In course of argument, learned counsel for the defendants submitted that the plaintiff is challenging the termination letter vide Ext.7 which was served on him at Rourkela and therefore, the Civil Court at Rourkela or at Bangaluru i.e. the place of Head Office of defendant-bank

have got jurisdiction to try the suit. It is also submitted that the plaintiff has submitted his appeal and review and the Appellate Authority and Reviewing Authority have sent letter to the plaintiff rejecting his prayer which was served at his residential address at Bhubaneswar because he was no more continuing as Branch Head of Rourkela Branch but those orders are not under challenge and therefore this Court has no jurisdiction to adjudicate the matter which is under challenge. On the other hand, learned counsel for the plaintiff submitted that this Court has jurisdiction to try the suit on the ground that there is breach of contract. It is further submitted that the offer letter to the plaintiff by the defendant-bank was issued in Bhubaneswar address and the plaintiff has also issued his acceptance from Bhubaneswar and therefore, the suit can be filed at Bhubaneswar.

9. It is already held that the plaintiff's job was as per the contract and the suit is only maintainable for damages for breach of contract. Therefore, in a suit for damages for breach of contract the cause of action consists of making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The determination of the place where the contract was made is part of law of contract. Making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a Court within whose

jurisdiction the acceptance was communicated. In the present case there is no dispute that the plaintiff has accepted the offer for his appointment at Bhubaneswar and intimated the result from Bhubaneswar. Hence, this Court has jurisdiction to adjudicate the suit of the plaintiff for damages for breach of contract and there is cause of action to file the suit. These two issues are answered accordingly.

Issue nos. 4, 5 and 6

10. Issue no.5 relates to claim of the plaintiff for reinstatement in service from the date of termination and to get all consequential service benefits. In view of settled position of law as held under issue no.1 this Court has no jurisdiction to direct the employer-defendant to reinstate the plaintiff nor can also give direction to give all consequential service benefits to the plaintiff from the date of his termination. Hence, the plaintiff is not entitled to the relief claimed under issue no.5.

11. So far as issue no.4 is concerned, it is to be examined whether the letter of termination vide Ext.7 issued by defendant no.3 terminating the plaintiff from service is lawful. It is the claim of the plaintiff that his service has been confirmed but his termination has been made by invoking Clause 23 of the offer letter of the bank which is applicable in case of probationer. It is his further claim that no disciplinary proceeding has been initiated by the Disciplinary Authority as required under ING Vysya Bank Employees' (Discipline and Appeal) Regulation, 2003 before imposing this major penalty

and therefore there is violation of Clause 6, 7 and 9 of the said Regulation. It is also claimed that principle of natural justice has been violated and therefore his termination is illegal. On the other hand, it is the stand of the defendants that opportunity was given to the plaintiff. After perusing all evidence defendant no.3 terminated the plaintiff due to his misconduct and violation of Ethics Policy and his termination is not as per the provisions of ING Vysya Bank Employees' (Discipline and Appeal) Regulation, 2003 rather in the terms of the provisions of the contract and, hence, it is lawful.

12. The plaintiff has examined himself as P.W.1 and narrated all about the same averments of the plaint in his examination-in-chief. The defendants have examined two witnesses from their side. On careful perusal of the evidence both oral and documentary, it is found that the documentary evidence as available on record is more helpful to decide this issue properly. The plaintiff claims that major penalty has been imposed on him without conducting disciplinary proceeding which is gross violation of the clauses of the ING Vysya Bank Employees' (Discipline and Appeal) Regulations, 2003. There is no dispute that the plaintiff got his appointment through offer letter dtd.03-06-2008 from ING Vysya Bank alongwith general terms and conditions of employment. The said document is Ext.1. There is also no dispute that the plaintiff's service has been confirmed as Branch Head w.e.f. 01-02-2009 as reveals from Ext.2, letter dtd.11-05-2009 of ING Vysya Bank. Ext.13 is the Ethics policy for ING Vysya Bank Ltd. which consists of

two parts of which Part B is ING Vysya Bank Employees' (Discipline and Appeal) Regulations, 2003. As per Clause 4(ii) of the said Regulations, 2003 removal from service is a major penalty. Clause 6 relates to procedure for imposing major penalty. Clause 7 deals with action on the Inquiry report and Clause 9 is about communication of orders. On perusal of Ext.13, it is clear that in case of imposition of major penalty departmental enquiry must be held by the Disciplinary Authority itself or by an order he may appoint an Inquiring Authority for holding an inquiry into the charges. On perusal of Ext.1 it is found that in Clause 30 of the contract it is mentioned that the bank reserves the right to take appropriate action as it may deem fit if there is any contravention of the provisions of the Ethics policy. Such actions by the bank would be either in terms of the provisions of the contract or ING Vysya Bank Employees' (Discipline and Appeal) Regulation, 2003. Hence, it is clear that bank can take action under the provisions of the contract if conduct of any employee contravenes the provisions of Ethics policy. Hence, it can be well concluded that bank has a right and option to proceed and to take action against any employee as per the terms of the contract of employment or as per the said Regulations, 2003. In the case at hand, from the termination letter (Ext.7) it is found that the termination of the plaintiff has been made as per the terms of the contract and not as per the aforesaid Regulations, 2003. Therefore, there is no requirement for conducting departmental proceeding as per Clause 6 of the said Regulations, 2003.

13. Ext.7 is the termination letter which is under challenge reveals that bank has terminated the contract of appointment by invoking Clause 23 of their offer letter HRD/HR/RECT/9551/812/2008 dtd.03-06-2008 without any notice for payment of any compensation in lieu of notice period thereof in view of misconduct of the plaintiff. It is the claim of the plaintiff that Clause 23 of the contract is applicable for the probationers but his service has been confirmed and therefore it is not applicable. Clause 23 of the contract is as follows :

“ The Bank reserves the right to terminate your appointment any time during the probation period or extended period of probation by giving 60 days of notice or payment in lieu of the notice without assigning any reason. Likewise, during the probation period, you can leave the services of the Bank by giving 60 days notice or payment in lieu thereof. The Bank may terminate your services with immediate effect without any notice or compensation, for any act of misfeasance, nonfeasance and malfeasance or fraud etc. in the performance of your duties or if you have made any false representation, or have willfully violated or refused to carry out and act up to the terms of your service or found inefficient or insubordinate or discourteous to customers or guilty of misconduct or have been negligent of your duties or have applied for insolvency. The Bank reserves the right to recover from the salary, allowances and any such money due and payable to you any such loss it may incur as a result of such misrepresentation, fraud etc. on your part. ”

13(a) It is further argued that Clause 24 is applicable for the plaintiff as his job has been confirmed. On further careful perusal of the contract it is found that Clause 23, 24, 26 and 30 are the relevant clauses to be looked into. A conjoint reading of the said clauses made it further clear that the Disciplinary Authority in exercise of Clause 30 of the Contract of Employment terminated the contract of the plaintiff in terms of Clause 23 of the contract. Therefore, it is held that the plaintiff's termination cannot be held unlawful on the ground that it was not done under appropriate clauses of the contract.

14. Now it is to be examined whether principle of natural justice was followed by defendant no.3. The evidence of plaintiff (P.W.1) itself reveals that four number of lapses (Lapse nos.1 to 4) were levelled against him and while concluding on the charges on consideration of written statement, the Disciplinary Authority i.e. defendant no.3 in the termination order has unilaterally held him guilty of only one charge i.e. lapse no.3 out of the four charges and has not held him guilty of lapse nos.1, 2 and 4. The evidence of plaintiff reveals that he filed written statement before the Disciplinary Authority in respect of the charges levelled against him which means he was given opportunity to place his stand. The documentary evidence as available on record in this respect is Exts.5 and 6. Ext.5 is the show cause notice issued by defendant no.3 asking the plaintiff to file show cause in writing. There are four lapses mentioned in the show cause notice. The lapse no.1 relates to dubious cash

credits, lapse no.2 is about collection of Rs.2,00,000/- from Additional Cashier and delivery of the cash to a non-customer and to return the cash after two days which is misuse of official power and allowing a 3rd party to have temporary financial gain over bank's funds. Lapse no.3 is relating to violation of discretionary power of the plaintiff as Branch Head and Lapse no.4 is suppression of facts by the plaintiff in helping a customer for opening of new account whose account was freezed by Income Tax Authorities which amounts to gross misconduct. Ext.6 is the show cause filed by the plaintiff perusal of which reveals that the plaintiff has admitted his fault as mentioned under lapse no.3 which clearly establishes that prior to receipt of approval from Regional Head he had exercised his discretionary power for reversal of cash deposit charges. D.W.2, the then Branch Operation and Service Head (in short BOSH) of Rourkela Branch in his evidence deposed that on 04-11-2009 he informed the Regional Head regarding the irregularities committed by the plaintiff. On perusal of Ext.7 it is found that the Disciplinary Authority has observed from record that the plaintiff was guilty of all the lapses. Considering the available material on record it is found that the plaintiff was given opportunity to place his stand and therefore principle of natural justice has not been violated.

15. In course of argument learned counsel for the plaintiff submitted that termination letter issued by defendant no.3 cannot be held as lawful as the plaintiff being Branch Head, in his case the termination letter should have been

issued by Vice President-H.R.D. but it has been issued by Head-Employee Relations. In this regard, on perusal of Ext.13 it is found that the schedule attached to the ING Vysya Bank Employees' (Discipline and Appeal) Regulations, 2003 speaks as to who is empowered to discharge the power of Disciplinary Authority, Appellate Authority and Reviewing Authority in case of which cadre of employee. The said schedule reveals that in case of Assistant Manager/Manager the Disciplinary Authority is Vice President-H.R.D. The Head-Employee Relations is higher in grade and cadre than Vice President-H.R.D. The schedule itself reveals that any authority higher in grade and cadre shall be empowered to discharge the functions of the Disciplinary Authority subordinate to him in the cadre and grade and in such cases, the appeal/review shall lie extend to the next higher grade. Hence, the Head-Employee Relations being higher in grade and cadre to Vice President-H.R.D, issuance of letter vide Ext.7 by Head-Employee Relations is not at all unlawful and he is empowered to issue the same as per the schedule to the said Regulations, 2003. So the argument raised in this context is not sustainable.

16. Hence, considering the aforesaid findings it is held that termination of plaintiff was done when he violated the terms of the contract of appointment. It is further held that proper procedure has been followed while terminating him. Therefore, the plaintiff's termination is not unlawful ?

17. The plaintiff claims that the defendants be directed

to pay compensation of Rs.50,000/-. It is already held that plaintiff has violated the terms of the contract and there was no violation of contract on the part of defendants in terminating him from service. Hence, he is not entitled to get compensation as claimed for. These issues are answered accordingly in negative and against the plaintiff.

Issue no.7

18. The plaintiff is neither entitled for the reliefs as claimed nor entitled for any other relief.

Hence, it is ordered.

ORDER

The suit be and the same be dismissed on contest against the defendants but under the circumstances without any cost.

*Ist. Addl. Senior Civil Judge,
Bhubaneswar*

The judgment is typed to my dictation by the typist attached to this Court directly on the computer provided under E-Court Project, corrected and pronounced by me in the open Court today i.e. on the 14th day of November, 2014 under my seal and signature.

*Ist. Addl. Senior Civil Judge,
Bhubaneswar*

List of Witnesses examined for the Plaintiff:

P.W.1 : Sri Sashisekhar Saha

List of Witnesses examined for the Defendants :

D.W.1 : Sri Rajendra Narayan Jena

D.W.2 : Sri Ch. V. Ramanayya Pantulu

List of Documents marked as Exhibits for the Plaintiff:

Ext.1: Copy of letter dtd.03-06-2008 of ING Vysya Bank Ltd.;

Ext.2: Letter dtd.11-05-2009 of ING Vysya Bank Ltd.;

Ext.3: Letter dtd.23-10-2009 ;

Ext.4: Letter dtd.25-11-2009 ;

Ext.5 : Show cause notice dtd.15-02-2010 (Copy) ;

Ext.6 : Reply to the show cause notice ;

Ext.7 : Letter dtd.13-03-2010 (copy) of defendant no.3 ;

Ext.8 : Appeal Memo (copy) ;

Ext.9 : Order dtd.30-06-2010 (copy) ;

Ext.10 : Copy of Review Petition ;

Ext.11 : Copy of E-mail dtd.25-05-2009 ;

Ext.12 : Copy of letter dtd.27-07-2010 ;

Ext.13 : Copy of Ethics Policy for ING Vysya Bank Ltd. ;

Ext.14 : Copy of Job Description.

List of Documents marked as Exhibits for the Defendants :

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*1st. Addl. Senior Civil Judge,
Bhubaneswar*

