

Hardwari Lal v. Union of India and others (M. S. Liberhan, J.)

(7) No other point has been raised to interfere with the recovery of the amount by the State Financial Corporation, in exercise of writ jurisdiction.

(8) The writ petition is dismissed with the above observations. There shall, however, be no order as to costs.

R.N.R.

Before : J. V. Gupta, A.C.J. & M. S. Liberhan, J.

HARDWARI LAL,—Appellant.

versus

UNION OF INDIA AND OTHERS,—Respondents.

L.P.A. No. 743 of 1984

10th May, 1990.

State Bank of India (Subsidiary Banks) Act, 1959—Ss. 29, 32 & 63—State Bank of Patiala (Officers') Service Regulations, 1979—Regl. 2(e) & 3(e) & 20—Resignation—Withdrawal of—Managing Director, the competent authority to accept resignation—M.D. on leave—General Manager accepting resignation during the absence of M.D.—G.M. vested only with financial and administrative powers of Managing Director in his absence—In exercise of such power G.M. accepting resignation—Acceptance confirmed by executive committee and thereafter by the Chairman of State Bank of Patiala—Managing Director as delegate of the Board of Directors cannot further sub-delegate his power—In temporary absence of M.D. of subsidiary bank only State Bank of India has power to appoint any other person to officiate as M.D. u/s 32—G.M. not competent to accept resignation—Employee continues in service—Effect of ratification of the order of the G.M. by the executive committee and the Board—Ratification by an authority who has no power to perform act cannot save the order—Power to accept resignation is not mere administrative power—Acceptance of resignation is a condition of service—G.M. is not clothed with this power.

Held, that there is no provision either under the State Bank of India (Subsidiary Banks) Act, 1959 or the State Bank of Patiala (Officers') Service Regulations, 1979 or any Resolution of the Board of Directors, authorising the Managing Director to further delegate his powers conferred upon him by the Board of Directors.

(Para 18)

Held, that the only statutory power conferred on the Managing Director was by S. 29(2) of the Act. It provides that subject to the general control of the Board of Directors, the day-to-day administration and management of the affairs of the Bank shall vest in the Managing Director and he shall exercise such other powers as were delegated to him by the Board of Directors. Even the temporary appointment of an Officer to discharge the functions of a Managing Director vests in the State Bank of India alone, in view of the provisions of section 32 of the Act. In other words, the Act empowers the State Bank of India alone to appoint a person to officiate as a Managing Director when the Managing Director is rendered incapable of discharging his duties during his absence by reason of infirmity or otherwise or is absent on leave or otherwise in circumstances not involving the vacation of his office.

(Para 22)

Held, that a reading of the provisions of the Act and the Regulations makes it apparent that neither the Executive Committee nor the Board of Directors have had jurisdiction and authority to appoint a Managing Director or authorise him to delegate the powers conferred by the Board of Directors or the statute. In our considered view, the Managing Director had no jurisdiction or authority to delegate his functions particularly decision-making functions to any officer subordinate to him. The Managing Director was not competent to authorise the General Manager to remove a person either by accepting the resignation or taking the disciplinary proceedings against a subordinate officer.

(Para 24)

Held, that acceptance of resignation and waiving off the period of notice or salary in lieu thereof, is not a simple administrative function. In fact, it amounts to acting on behalf of the Bank.

(Para 25)

Held, that we find no force in the contention raised by the counsel for the Bank that the act of conferring the powers on the General Managers of the Bank by the Managing Director during his absence on leave stood ratified in view of the Resolution passed by the Executive Committee. No provision were pointed out under which either the Executive Committee or the Board of Directors could appoint a Managing Director. The only repository of power for appointment of either a permanent Managing Director or the *ad hoc* arrangements for the appointment of Managing Director or conferring the powers of a Managing Director on any Officer for a short period or by way of *ad interim* arrangement is the State Bank of India. We are unable to understand how an act can be ratified by an authority who had no power to perform that Act. The Board of Directors as well as the Executive Committee had no

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power to appoint a Managing Director. Logically and as a necessary corollary these bodies cannot delegate the powers of Managing Director to any Officer to discharge the functions of a Managing Director. As a natural consequence, they cannot ratify the illegal act of the Managing Director delegating his powers to the General Managers during his absence.

(Para 26)

Held, on facts that before any effective order on the resignation was passed by either of the competent authorities, the resignation stood withdrawn.

(Para 27)

Held, that it cannot be presumed that in the absence of any express prohibition on delegation of powers, there vests an inherent power in the Managing Director. In case of statutory bodies who are legal entities and can only speak through Resolutions, as it has no living mind, the power has to be referable to some source. Thus, the power of a person in its legal entity can be drawn either under the statute or under the Resolution passed by the authorities.

(Para 28)

Held, that we are further of the view that acceptance of resignation or removal of a person from service are the conditions of service and power to accept resignation cannot be termed as merely an administrative power.

(Para 29)

Appeal Under Clause X of the Letters Patent against the Judgment dated May 28, 1984 in Civil Writ Petition No. 2396 of 1982.

Anand Sarup, Sr. Advocate with Rajiv Vij, Advocate and Deepak Agnihotri, Advocate, for the Appellant.

Vijay Tewari, Advocate, for the Bank Respondents.

JUDGMENT

M. S. Liberhan, J.

(1) Adumbrated in brief, the relevant facts giving rise to this Letters Patent Appeal are; Hardwari Lal was serving as a Manager of the Branch of State Bank of Patiala at Baretta. It was claimed that on May 8, 1982 when a seminar was being held at Mansa, R. C. Kampani, Regional Manager III(P) of the State Bank of Patiala (hereinafter referred to as the Bank) rebuked, snubbed and harangued the appellant (hereinafter called the petitioner), who was also one of the

participants, in presence of so many people. R. C. Kampani's conduct resulted in a great mental stress on the petitioner who under the resultant depression, submitted his resignation on May 11, 1982 and forwarded the same to the Regional Manager III(P) of the Bank with a further request that the condition of giving three months notice or depositing three months salary in lieu thereof, may be waived. Later on the advice of friends and well-wishers and in view of the family circumstances, he withdrew his resignation and sent a telegram to that effect on May 17, 1982 to the Regional Manager III(P) of the Bank. On the same day i.e., on May 17, 1982, the petitioner sent a letter confirming the telegram withdrawing his resignation. He continued working as Manager of the Bareta Branch of the Bank till May 22, 1982 when he received intimation through a letter, dated May 18, 1982 that the condition of three months notice period or salary in lieu thereof had been waived off and his resignation had been accepted on May 14, 1982. A copy of the letter is attached as Annexure P-4 to the Writ Petition.

(2) The facts are not in dispute except the incident regarding the rebuking, snubbing and insulting the petitioner by R. C. Kampani and existence of the alleged compulsion for submitting the resignation letter, dated May 11, 1982 with a forwarding letter was received in the Head Office on May 12, 1982. It was on the request of the petitioner for immediate action in the matter, that the matter was immediately dealt with and put up before the General Manager on May 14, 1982, as the Managing Director was on leave from May 11, 1982 to May 15, 1982. The General Manager (Operation) after applying his mind and taking into consideration all the aspects of the case, ordered the acceptance of the resignation of the petitioner on May 14, 1982. A copy of the order has been annexed as Annexure R-1/A, the operative part of which reads as under:

"In the instant case, the officer has requested for waiving of/ reducing the notice period and acceptance of resignation with immediate effect. In view of the ill health of the officer, his own request for waiving of the notice is accepted and the notice period is waived of, as a special case. It is, however, clarified that this may not be treated as a precedent for similar other cases in future. The relieving arrangements in place of the officer concerned should be made forthwith. He should be relieved of his charge.

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Satisfaction about 'no dues' may be made before payment of his retiral benefits/dues."

The order was conveyed to the petitioner,—*vide* Memo., dated May 18, 1982, Copy Annexure R-2. The petitioner was relieved on June 9, 1982, because in the meantime he proceeded on leave from May 24, 1982 to June 8, 1982. The respondents claimed that the Regional Manager III(P) while accepting the resignation of the petitioner, exercised the powers of Managing Director, as he was authorised to do so by the Managing Director,—*vide* Office Order No. 6, dated May 11, 1982, which reads as under :—

"STATE BANK OF PATIALA

No. PSMD

M.D.'s Sectt.

Dated 11th May, 1982

Baisakh 21, 1984 Saka.

OFFICE ORDER NO. 6

As I shall remain on leave for 3-4 days from the 11th May, 1982 due to indisposed health, Shri L. D. Khanna, General Manager (Operations) and Shri N. G. Sardana, General Manager (Plg. & Dev.) will exercise, within their respective spheres, the financial and administrative powers of the Managing Director till I resume duty.

Sd/-

MANAGING DIRECTOR"

(3) Later, i.e. on May 28, 1982, the above Office Order was approved by the Executive Committee of the Bank. It was claimed that the withdrawal letter dated May 17, 1982 with the Office Notings of Assistant General Manager and General Manager was put up before the Managing Director on August 7, 1982, who observed that since the officer had already taken recourse to the Court of law, it did not call for any further action, his resignation having already been accepted on May 14, 1982 and the notice period had been waived. The Managing Director further observed that there was nothing in the letter of resignation or letter of withdrawal or the forwarding letter to show that the resignation was not voluntary or on his own volition and that the allegations were after-thought.

(4) The only contention raised before the learned Single Judge was, that since the State Bank of Patiala is a subsidiary branch of State Bank of India by virtue of State Bank of India (Subsidiary Banks) Act, 1959 (hereinafter referred to as the Act) and the service conditions of the petitioner are governed by the State Bank of Patiala (Officers') Service Regulations 1979 (hereinafter referred to as the Regulations) and under Regulation 3(e) the Board of Directors have authorised only the Managing Director to accept resignation of Junior Management and Middle Management Officers if the same involves waiving off notice period. The General Manager (Operations) was not competent to accept the resignation of the petitioner. The Managing Director was not competent to delegate his powers to any other person to officiate in his absence. Thus, Office Order No. 6, dated May 11, 1982, was *non est*. Resultantly, the order passed on May 14, 1982, accepting the resignation was without jurisdiction and a void order.

(5) The learned Single Judge keeping in view the order, dated August 7, 1982 of the Managing Director to the effect that the withdrawal letter, dated May 17, 1982 of the petitioner, did not call for any further action since the officer had already taken recourse to the Court of law, his resignation having already been accepted and notice period waived off, came to the conclusion that the order of General Manager, dated May 14, 1982 accepting the resignation of the petitioner stood ratified by the Managing Director,—*vide* his order, dated August 7, 1982. Thus, the acceptance of resignation by the General Manager related back to May 14, 1982. The learned Single Judge further observed that the intimation of withdrawing the resignation on May 17, 1982 was of no consequence, as the resignation of the petitioner had already been accepted by the General Manager and once it had been accepted, the petitioner could not withdraw the same. Resultantly, the Writ Petition was dismissed.

(6) The learned counsel for the appellant assailed the findings of the learned Single Judge and contended that the same cannot be sustained, as the order of accepting the resignation was passed by an incompetent authority and the same could not have been ratified at a later stage, particularly when it was withdrawn before the assumed ratification. Per Regulation 3(e), the Board of Directors had authorised the Managing Director alone to accept the resignation of Junior Management and Middle Management Officers. No authority was given to the Managing Director for further delegation of his powers to any subordinate officer. It was urged that the alleged order, dated

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August 7, 1982 is only a note put up by the Officer through the Managing Director for considering the withdrawal of resignation and it did not amount to ratification nor the Managing Director had applied his mind with the object of either ratifying the act or declining the same. It was further submitted that the acceptance of resignation after waiving off the three months notice period would become operative only when the same was ordered by the competent authority and was notified to the Officer. Prior to the date of acceptance of the resignation by the competent authority and intimation of the order of acceptance, the Officer was well within his right to withdraw the same and further if the withdrawal had been intimated prior to the happening of any of the above eventualities, the authority had no jurisdiction to accept the resignation as it stood withdrawn, the moment withdrawal was notified to the respondent-Bank, there was no resignation with the competent authority to be accepted. Herein, undisputably the intimation with respect to withdrawal of resignation was given to the Bank and received by it before the Managing Director is alleged to have ratified the acceptance of resignation by the General Manager (Operations) who was not competent to accept the same. Before the acceptance of resignation and its intimation to the petitioner, its withdrawal was intimated to and served on the respondent-Bank. It was accepted that resignation was tendered on May 11, 1982 with a request to accept the same immediately by waiving off the condition of giving three months notice or depositing three months salary in lieu thereof. It was alleged to have been accepted on May 14, 1982 but intimation with respect to its acceptance and the sanction for waiving off the period of notice was issued on May 18, 1982, while the resignation was, in fact, withdrawn on May 17, 1982 and the intimation of its withdrawal was furnished to the Bank on May 17, 1982 itself.

(7) The learned counsel for the respondents refuted the submissions made by the learned counsel for the appellant. It was argued that the Managing Director went on ordinary leave from May 11, 1982 to May 15, 1982 and,—*vide* Office Order No. 6, dated May 11, 1982, the Managing Director delegated his financial and administrative powers to the General Manager (Operations) and General Manager (Planning and Development) within their spheres during his leave period. The alleged delegation of powers was approved and confirmed by the Executive Committee in its Meeting held on May 28, 1982 in the following terms :

"Agenda Item No. 38

Shri G. K. Ahluwalia, Managing Director, Ordinary Leave.

Due to illness, the undersigned remained on ordinary leave from the 11th May, 1982 to 15th May, 1982 (both days inclusive). Shri L. D. Khanna, General Manager (Operations) and Shri N. G. Sardana, General Manager (Planning and Development) were allowed to exercise within their respective spheres, the financial and administrative powers of the Managing Director.

Submitted for approval and confirmation.

Sd/-
G. K. Ahluwalia,
Managing Director.

25th May, 1982

Jeth 4, 1904 Saka.

Orders of the Executive Committee at their meeting held on 28th May, 1982 at New Delhi:—

Approved and Confirmed.

Sd/-
K. N. BARRY,
Chairman."

(8) It was urged that the State Bank of Patiala i.e., the respondent-Bank is a Subsidiary Bank as envisaged by the Act. The fact as well as the law with respect to the character of the respondent-Bank being a Subsidiary Bank was not disputed at any point of time. It was submitted that the Managing Director was clothed with the powers to run day-to-day administration and management of the affairs of the Subsidiary Bank. He, *vide* Office Order No. 6, dated May 11, 1982, authorised the General Managers to exercise their administrative as well as financial powers during his absence. The authorisation was ratified by the Executive Committee in its meeting later. As a natural consequence of the ratification of the Office Order of the Managing Director delegating his authority, the General Manager (Operations) stood legally authorised to discharge the functions of a Managing Director in his absence. The ratification by the Executive Committee became operative with effect

from May 11, 1982. Thus, the resignation was duly accepted by a duly authorised person. In the alternative, it was argued that the Managing Director,—*vide* his order, dated August 7, 1982 ratified the act of the General Manager of accepting the resignation as well as waiving off the notice period. As a natural consequence, the ratification by the Managing Director dated August 7, 1982 became operative on May 14, 1982 and the act of acceptance of resignation stood ratified with effect from the said date, i.e., May 14, 1982 and thus even if there was an irregularity, that stood removed.

(9) Under the Act, "State Bank" means the State Bank of India constituted under the State Bank of India Act, 1955 and the subsidiary Bank was made a body corporate. Chapter V of the Act provides for management of the Subsidiary Banks. Section 23 of the Act provides that all the office-holders, i.e., chairman, director etc., etc. shall be deemed to have vacated that office on the appointed day. Section 24 thereof clothes the State Bank of India with the power to manage the Subsidiary Banks. It may, from time to time, give directions and instructions to a Subsidiary Bank in regard to any of its affairs and business. Subject to any such directions and instructions, the general superintendence and conduct of the affairs and business of a Subsidiary Bank shall, as from the appointed day, vest in a Board of Directors who may, with the assistance of the Managing Director, exercise all powers and do all such acts and things as may be exercised or done by that Bank. Section 25 provides for the composition of the Board of Directors. The Managing Director appointed under section 29(1) or under section 32 is one of the Directors of the Board of Directors. Section 29 of the Act authorises the State Bank, after consulting the Board of Directors of a Subsidiary Bank, and with the approval of the Reserve Bank, to appoint a Managing Director for that Subsidiary Bank. Section 29 runs as under:

"29. *Managing Director.*—(1) The State Bank shall, after consulting the Board of Directors of a subsidiary bank, and with the approval of the Reserve Bank, appoint a managing director for that subsidiary bank :

Provided that in the case of the first appointment of the managing director no such consultation with the Board of Directors of the subsidiary bank shall be necessary.

(2) Subject to the general control of the Board of Director, the day-to-day administration and management of the affairs

of a subsidiary bank shall vest in the managing director and the managing director shall exercise such other powers and perform such other duties as may be delegated to him by the Board of Directors.

(3) The managing director of a subsidiary bank—

(a) shall devote his whole time to the affairs of that bank

Provided that managing director of the subsidiary bank may, with the approval of the State Bank and the Reserve Bank, be a director of any other institution ;

(b) shall hold office for such term not exceeding four years and subject to such conditions as the State Bank may, with the approval of the Reserve Bank, specify at the time of his appointment ;

(c) shall receive such salary and allowances as may be determined by the State Bank with the approval of the Reserve Bank.

(4) The managing director vacating his office shall be eligible for reappointment.

(5) The State Bank may, with the approval of the Reserve Bank, for any sufficient reason, remove from office the managing director of a subsidiary bank :

Provided that no managing director shall be removed from office unless he has been given an opportunity of showing cause against such removal.”

(10) It would be expedient to refer to the resume of the relevant provisions of the Act and Regulations before dealing with the contentions raised by the parties.

Section 32 provides for appointment of another person for discharging the duties of a Managing Director during his absence. It envisages that the State Bank of India may appoint another person to officiate for the Managing Director of the Subsidiary Bank for and during the period the Managing Director appointed under section 29 of the Act would remain absent on leave or is rendered incapable of

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discharging his duties by reason of infirmity. Section 32 is in the following terms :

“32. Appointment of another person for discharging the duties of managing director during his absence.—If the managing director of a subsidiary bank is rendered incapable of discharging his duties by reason of infirmity or otherwise or is absent on leave or otherwise in circumstances not involving the vacation of his office, the State Bank may appoint another person to officiate for the managing director until the date on which the managing director resumes duty.”

(11) Section 63 authorises the State Bank to make regulations. It may make regulations with respect to the powers and duties of General Manager of the Subsidiary Bank. It provides for formation of various Committees and for delegation of powers and functions of the Board of Directors of the Subsidiary Bank to the General Manager or Director or other Officers or employees of the Bank.

(12) In exercise of the powers conferred by section 63 of the State Bank of India (Subsidiary Banks) Act, 1959, the Regulations of the Subsidiary Bank and the respondent-Bank, i.e. State Bank of Patiala were promulgated. ‘Competent Authority’ has been defined by Regulation 2(e) which is to the following effect :

“2. (e) “Competent authority” means the authority designated by the Board or the Executive Committee and till such authority is designated authority for the purpose immediately prior to the appointed date.”

(13) Chapter IV of the Regulations provides for appointments, probation, confirmation, promotion, seniority, retirement and termination. Regulation 14 envisages that all appointments etc. shall be made by the competent authority.

(14) Regulation 20 authorises the Bank to terminate the services of any officer other than a probationary officer by giving him three months’ prior notice in writing or three months’ emoluments in lieu thereof. Similar obligation has been imposed upon the Officer that he shall not resign from the service of the Bank otherwise than on

the expiry of three months from the service on the Bank of a notice in writing of such resignation. Regulation 20 reads as under:

“20 (1) The Bank may terminate the services of any officer other than a probationary officer by giving him three months' previous notice in writing or three months' emoluments in lieu thereof.

(2) No officer shall resign from the service of the Bank otherwise than on the expiry of three months from the service on the Bank of a notice in writing of such resignation :

Provided that a Probationary Officer who has entered the service of the Bank as such shall not be entitled to give notice or leave the service of the Bank until the expiration of the stipulated period of probation and any breach of this proviso shall entitle the Bank to proceed in accordance with the provisions of sub-regulation (3) or regulation 14 :

Provided further that the competent authority may, at its discretion, permit an officer to resign without notice or forfeiture of security deposit, or payment in lieu of notice or may reduce the period of notice.”

(15) The Bank which has been authorised to terminate the services of an Officer, as defined by Regulation 20, means the respondent-Bank, i.e., the State Bank of Patiala. There is no dispute that the competent authority in the case of the appellant to accept his resignation or to dispense with the period of notice or forfeiture of security deposit, or payment in lieu of notice or to reduce the period of notice, was the Managing Director.

(16) It was further urged on behalf of the Bank that it was on the request of the petitioner that immediate action was taken and the resignation was accepted. The petitioner cannot be permitted to resile from his act, nor can the Bank be permitted to suffer on account of the wrongful act of the petitioner.

(17) Lastly, it was urged that even if the termination of the services by acceptance of the resignation was illegal, the petitioner is only entitled to three months salary and no re-instatement. The learned counsel for the respondents relied on *Parmeshwari Prasad*

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Gupta v. The Union of India (1), *Dipak Kumar Biswas v. Director of Public Instruction and others* (2), and Halsbury's Laws of England, Fourth Edition, Volume 1, Para 756.

(18) In our considered view, pithily stated, it emerged from a reading of the provisions and scheme of the Act as well as the Regulations that it was the Managing Director who was authorised to act in the matter of accepting the resignation by waiving off the notice period or the salary for three months in lieu thereof, which was a precondition for submitting the resignation. There is no provision either under the Act or the Regulations or any Resolution of the Board of Directors, authorising the Managing Director to further delegate his powers conferred upon him by the Board of Directors.

(19) It was observed in *Mangulal Chunilal v. Manilal Maganlal and another* (3), that "Where the Commissioner has delegated his powers and functions under section 481(1)(a) to a municipal officer, it is the officer alone who can launch proceedings against person charged with offences under the Act or the rules, regulations or by-laws made under it. The officer to whom this function is delegated cannot further delegate it to another."

(20) The following observations of a Division Bench of Andhra Pradesh High Court in *A. Kasturi Ranga Chary v. The Chairman, Food Corporation of India and others* (4), are worth noticing :

"It is now well settled that delegation could take place only when the delegator has the power to delegate; but when the delegator does not have any power to delegate, we fail to appreciate how it could delegate to an other officer the powers which it did not possess."

(21) We were taken through the proceedings of the Executive Committee of the Bank on Agenda Item No. 38 wherein approval and confirmation was sought by Shri G. K. Ahluwalia, Managing Director who was on ordinary leave, of his office order authorising during his absence on ordinary leave from May 11, 1982 to May 15, 1982 (both days inclusive) Shri L. D. Khanna, General Manager (Operations)

(1) A.I.R. 1973 S.C. 2389.

(2) A.I.R. 1987 S.C. 1422.

(3) A.I.R. 1968 S.C. 822.

(4) 1981(2) S.L.R. 111.

and Shri N. C. Sardana, General Manager (Planning and Development) to exercise within their respective spheres, the financial and administrative powers of the Managing Director.

(22) As pointed out earlier, the management of the Bank vested in the Board of Directors of the Bank and the Managing Director is one of the members of the Board. The Act authorises only the State Bank of India to appoint a Managing Director after consulting the Board of Directors of the Subsidiary Bank and by taking the prior approval of the Reserve Bank in this respect. The Managing Director could be removed by the State Bank of India alone. The only statutory power conferred on the Managing Director was by section 29(2) of the Act. It provides that subject to the general control of the Board of Directors, the day-to-day administration and management of the affairs of the Bank shall vest in the Managing Director and he shall exercise such other powers as were delegated to him by the Board of Directors. Even the temporary appointment of an Officer to discharge the functions of a Managing Director vests in the State Bank of India alone, in view of the provisions of section 32 of the Act. In other words, the Act empowers the State Bank of India alone to appoint a person to officiate as a Managing Director when the Managing Director is rendered incapable of discharging his duties during his absence by reason of infirmity or otherwise or is absent on leave or otherwise in circumstances not involving the vacation of his office.

(23) The Act provides for formation of various Committees. The Executive Committee is one of them. The Executive Committee has been further authorised to discharge the functions of the Board of Directors subject to the Regulations or the directions of the Board of Directors.

(24) A reading of the provision of the Act and the Regulations makes it apparent that neither the Executive Committee nor the Board of Directors have or had jurisdiction and authority to appoint a Managing Director or authorise him to delegate the powers conferred by the Board of Directors or the statute. In our considered view, the Managing Director had no jurisdiction or authority to delegate his functions particularly decision-making functions to any Officer subordinate to him. The Managing Director was not competent to authorise the General Managers to remove a person either by accepting the resignation or taking the disciplinary proceedings against a subordinate Officer.

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(25) It is obvious from the facts and circumstances mentioned above, that acceptance of resignation and waiving off the period of notice or salary in lieu thereof, is not a simple administrative function. In fact, it amounts to acting on behalf of the Bank. Initiating disciplinary proceedings in regard to removal, dismissal or awarding of punishment or determining the condition of service are the functions either of the Board of Directors or of the person to whom the Board of Directors delegated its powers. The delegatee cannot further delegate the powers conferred upon him, in the absence of a specific authority to sub-delegate. The learned counsel for the respondents failed to show that the Managing Director was authorised to sub-delegate his authority.

(26) We find no force in the contention raised by the counsel for the Bank that the act of conferring the powers on the General Managers of the Bank by the Managing Director during his absence on leave stood ratified in view of the Resolution passed by the Executive Committee. No provisions were pointed out under which either the Executive Committee or the Board of Directors could appoint a Managing Director. The only repository of power for appointment of either a permanent Managing Director or the *ad hoc* arrangements for the appointment of Managing Director or conferring the powers of a Managing Director on any Officer for a short period or by way of *ad interim* arrangement is the State Bank of India. We are unable to understand how an act can be ratified by an authority who had no power to perform that act. The Board of Directors as well as the Executive Committee had no power to appoint a Managing Director. Logically and as a necessary corollary these bodies cannot delegate the powers of Managing Director to any Officer to discharge the functions of a Managing Director. As a natural consequence, they cannot ratify the illegal act of the Managing Director delegating his powers to the General Managers during his absence.

(27) Otherwise also, ratification being a conscience act, nothing can be inferred from the documents placed on the record that the authorities, i.e. either the Managing Director or the Executive Committee or the Board of Directors expressly or by implication had applied their mind for the ratification of acceptance of resignation and waiving off the period of three months notice or salary in lieu thereof. We find support for our above observations from the view taken by their Lordships of the Supreme Court in *Punjab National Bank v. Shri P. K. Mittal* (5), wherein it was observed that termina-

tion of a service before the expiry of three months as required by the Regulations was illegal and without jurisdiction. It would come into operation only on the expiry of three months. In the case in hand, it is only the Board of Directors or the Managing Director who could have waived the period of notice or salary in lieu thereof. In view of the admitted facts, it is clear that before any effective order on the resignation was passed by either of the competent authorities, the resignation stood withdrawn. Even otherwise, by reading the order, dated August 7, 1982, it cannot be said that the Managing Director applied his mind with a view to ratify the act of General Manager accepting the resignation and waiving the period of notice. There cannot be any ratification unless the ratifier is conscious of the fact and consciously ratified it expressly or implied by the act or the irregularity committed. The ratification can be made only of irregular or voidable acts. Void acts cannot be ratified. It was not shown by referring to any provisions of law by which void acts could be ratified. There is no gainsaying that acceptance of resignation on May 14, 1982 was without jurisdiction, void and was *non est* in the eye of law, inasmuch as the General Managers were never clothed with the authority or powers of a competent person to accept the resignation. The act was void *ab initio* and thus no ratification could have been effected. Our views are in conformity and are supported by the observations in *East and West Insurance Co. Ltd. v. Mrs. Kamala Jayantilal Mehta* (6), wherein it was observed as under :

“Where a valid resolution has been passed by some one lacking the necessary authority the persons with the requisite authority may adopt the resolution validly passed and thereby ratify it. But where the objection to the resolution is not the wanting of authority but illegality in the very making of it, in the very passing of it, then it is impossible to accept the contention that the doctrine of ratification can validate a resolution which when it was passed as invalid.”

(28) We find further support from a decision in Letters Patent Appeal No. 366 of 1986 (*Haryana Seeds Development Corporation Ltd. and others v. Shri J. K. Aggarwal*, decided on September 13, 1988) wherein it was observed that under the Memorandum and Articles of Association, it was for the Board of Directors to appoint

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and remove a person and the removal of a person by its Executive could not be ratified later by the Board. It is immaterial, whether there was any prohibition restraining the Managing Director from sub-delegating his powers or not. Statutory authority draws its strength or power either from the statute or by the Resolutions of the authority. It cannot be presumed that in the absence of any express prohibition on delegation of powers, there vests an inherent power in the Managing Director. In case of statutory bodies who are legal entities and can only speak through resolutions, as it has no living mind, the power has to be referable to some source. Thus, the power of a person in its legal entity can be drawn either under the statute or under the Resolution passed by the authorities.

(29) We are further of the view that acceptance of resignation or removal of a person from service are the conditions of service and power to accept resignation cannot be termed as merely an administrative power.

(30) So far as *Permeshwari Prasad Gupta's case* (supra) is concerned, there is no dispute with the proposition of law laid down in **the judgment to the effect that any irregularity committed in holding of a meeting can be ratified either expressly or impliedly by accepting the proceedings of the meeting in a latter meeting validly convened. The irks of an irregularity can be ratified. Acts of a person done on behalf of a principal can be ratified only if there is any irregularity in the performance of the act by the agent or the doer, but void acts cannot be ratified. It is only the voidable acts which can be ratified and that too by a person competent to do so. A person cannot ratify the acts which he himself had no power to do. It is not disputed that before the alleged act of acceptance of resignation was ratified, the resignation stood withdrawn. In our view, since the resignation was accepted by an incompetent officer, such acceptance amounts to no acceptance and it stood withdrawn before both the dates, i.e. the date on which the alleged Executive Committee was stated to have accepted the delegation of powers of Managing Director on the General Manager by the Managing Director as well as when the Managing Director observed on August 7, 1982 that since the matter was pending in a Court of law and the resignation already stood accepted, no action was called for.**

(31) With utmost respect to the learned Judge, we find ourselves unable to agree that the order of the General Manager, dated May 14, 1982, accepting the resignation of the appellant was ratified by the

Managing Director by his order, dated August 7, 1982, and thus the impugned orders stood validated. These orders cannot be sustained in view of our above observations.

(32) For the reasons recorded above, the appeal is accepted. The judgment of the learned Single Judge is set aside.

(33) Since the appellant has filed an affidavit giving up his entire claim with respect to his back wages from the date of acceptance of his resignation till the date of his reinstatement, the relief with respect to payment of back wages is declined. The orders, dated May 14, 1982 conveyed on May 18, 1982 and August 7, 1982 are quashed.

(34) The entire period from May 14, 1982 till the appellant is reinstated, shall be treated as leave of the kind due to him and the period shall be counted as a period spent on duty for the purpose of increment and retiral benefits. Keeping the equities in view, this order of our shall not affect the person who have already been promoted during this period. The appellant shall be entitled to reinstatement and consequent retiral benefits on his retirement and to no other benefits.

No order as to costs.

R.N.R.

Before : J. V. Gupta, A.C.J. & K. P. Bhandari, J.

STATE OF HARYANA AND OTHERS,—Appellants.

versus

AMAR SINGH CLARE, ASSISTANT EXCISE & TAXATION OFFICER, OFFICE OF DEPUTY EXCISE & TAXATION COMMISSIONER, JAGADHRI AND OTHERS,—Respondents.

Letters Patent Appeal No. 180 of 1987.

12th February, 1990.

Constitution of India, 1950—Art. 16(4) & 309—Punjab Excise and Taxation Department (State Service Class III-A) Rules, 1956—Rls. 2(f), 5 & 6—Reservation for promotion to class III-A service—No provision for reservation made—Claim for such reservation