

(2011) 06 MAD CK 0277

In the Madras High Court

Case No : Writ Petition No. 22698 of 2009

A. Senthil Kumar

APPELLANT

Vs

The General Manager (NW2), The Chief Manager and The
Branch Manager, State Bank of India

RESPONDENT

Date of Decision : 08-06-2011

Acts Referred:

State Bank of India Service Rules for Customer Relation Executives (Personal Banking), 2007 — Rule 4

Citation : (2011) 6 MLJ 838

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : K.V. Subramanian for M.K. Muruganantham, for the Appellant; G. Masilamani for K.S. Sundar, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—The prayer in the writ petition is to quash the discharge certificate and the communication of termination dated 10.8.2009 issued by the General Manager, State Bank of India, the first Respondent herein and direct the Respondents to reinstate the Petitioner as Customer Relation Executive, either on regular basis or at least by renewing the contract on par with other contractual candidates.

2. The brief facts necessary for disposal of this writ petition are as follows:

(a) The Petitioner passed B. Sc. Computer Science and M.B.A. with optional subject of Marketing and Operational Management. Petitioner belongs to Scheduled Caste community.

(b) Petitioner served as Customer Relation Executive (Personal Banking) in the State Bank of India for a period from 20.8.2007 to 19.8.2009 on contract basis. The Petitioner initially worked at Mylapore branch and he claims that he has achieved the targets stipulated by the Bank. Later on, he was transferred to

Pudukkottai Branch.

(c) According to the Petitioner, he had achieved more than 75% of the budgeted level till 2009 and he was given variable pay by the Respondent bank based on his performance. The Petitioner claims that he has also brought out a substantial quantum of new business to the tune of Rs. 4.09 crores against the budgeted level of Rs. 5.00 crores in deposits between 1.6.2008 to 30.6.2009. The appointment/contract was for a period of two years and it is stated in the order that the contractual appointment is subject to renewal.

(d) Petitioner contends that he is not given renewal of appointment after completion of two years and he was discharged from service, even though contract was renewed for others, who were appointed similar to the Petitioner.

3. The Respondents have filed a counter affidavit contending that the Central Recruitment and Promotion Department of State Bank of India issued an advertisement on 27.2.2007 and invited applications from Indian Citizens for appointment of 1000 + 15 + 300 contract vacancies for the contract appointment as Customer Relation Executives throughout India. The posts were notified as contract basis appointment for marketing banking products in personal banking sector. The advertisement dated 27.2.2007 specifically mentions that the vacancies are to be filled up on contract basis and such contract appointments will be initially for a period of two years. The eligible candidates were interviewed and successful candidates were appointed on contract basis. The appointees were subjected to State Bank of India Service Rules for Customer Relation Executives (Personal Banking) 2007 (hereinafter referred as the Rules). Rule 4 specifically states that the appointment will be purely contractual in nature for a specific period. The contract may be renewed on completion of contractual period depending on the performance and suitability of the Officer at Bank's discretion and needs of the bank. The officers shall also have the option to renew or not to renew the contract period at the time of expiry of the term of the contract.

4. The Petitioner was given appointment on contract basis for two years and he cannot claim permanency. Renewal of contract appointment for further period is depending on the performance suitability and the need as per the above referred rule. The period of contract expired by efflux of time. As per the counter affidavit the renewal of contract is depending on the following factors: (1) business exigencies require such contractual appointment; and (2) performance of the Officers under contract are more than 60% of the target. The Petitioner was appointed on contract basis from 20.8.2007 to 19.8.2009 i.e., for two years. Petitioner's performance in Pudukkottai branch was not satisfactory and 60% target was not achieved. Hence variable pay was not paid during the quarterly period of June, September, December, 2008 as well as March and June, 2009. Petitioner's employment on contract basis period came to an end on 19.8.2009 and considering his performance and unsuitability, the contract was not renewed. The appointment having been made for a term, on the expiry of the term the

Petitioner cannot compel the Respondents to renew the appointment which was made on tenure basis. According to the counter affidavit, Petitioner achieved only 25.47% of target and his claim that Rs. 4.09 crores against the budget level of Rs. 5.00 crores achieved is unsustainable as the Petitioner has included in his performance the walk-in-business and cross business which cannot be reckoned for the performance on ascertaining target. It is further stated in the counter affidavit that along with the Petitioner, contracts of seven other officers who have also not achieved their target were not renewed. Since the contract was not renewed, discharge order was issued on 10.8.2009, which is valid and legal. According to the Respondent bank, Petitioner's performance is the lowest with 25.47% and out of 59 officers appointed on contract basis, the bank has not renewed the services of only eight persons as their performances were below 60% of the target fixed.

5. A reply affidavit was filed by the Petitioner stating that on 20.7.2010 the Bank has issued a circular formulating a scheme by means of policy decision for absorption of Officers appointed on contract basis. The Petitioner though was not on the rolls of the Bank on the cut-off date viz., 14.7.2010 he is entitled to avail the benefit of the said circular.

6. An additional counter affidavit was filed by the Respondents contending that the said scheme of permanent absorption was introduced as one time measure subject to the conditions that the Contract Officer should be in employment as on 14.7.2010 and the said Contract Officer should have achieved 60% of the target. The Petitioner was not in employment as on 14.7.2010 and he has not achieved the 60% of the target and hence he was removed on 10.8.2009 and therefore the circular will not help the Petitioner in any manner.

7. Mr. K.V. Subramanian, learned Senior Counsel appearing for the Petitioner reiterated the contentions raised in the affidavit and submitted that the Bank has issued appreciation letters to the Petitioner for his good performance, particularly when he was serving in the Mylapore Branch and the counter affidavit filed by the Respondents is contrary to the appreciation letters and therefore the Petitioner is entitled to get either renewal of contract or absorption on permanent basis.

8. Mr. G. Masilamani, learned Senior Counsel appearing for the Respondents Bank submitted that the Petitioner's performance is the least and the appreciation letters given by the Bank is for the entire staff of the branch as a whole viz., Mylapore Branch and the Petitioner cannot contend that merely because the said branch is appreciated the Petitioner's performance is appreciated. The learned Senior Counsel also submitted that even though the Petitioner's performance is found low some officers have written appreciation to encourage the Petitioner and the same will not confer any right to the Petitioner, particularly when his performance as a whole is only 25.47% whereas 60% is the minimum requirement for consideration of renewal of contract or for absorption.

9. I have considered the rival submissions made by the learned Senior counsel for the Petitioner as well as learned Senior counsel for the Respondents.

10. The point for consideration is whether the Petitioner is justified in demanding regular appointment/renewal of contract appointment as Customer Relation Executive after the expiry of contract period.

11. It is the admitted case that the Petitioner was appointed pursuant to the advertisement issued on 27.2.2007 inviting applications for contract appointments as Customer Relation Executive. It is the specific case of the Respondents that the advertisement specifically mentioned that the appointment will be initially for a period of two years with an option to renew. It is not in dispute that the contractual appointment of the Petitioner was issued subject to the State Bank of India Service Rules for Customer Relation Executive (Personal Banking) 2007. Rule 4 of the said Rules specifically states as follows:

The appointment of Customer Relationship Executive (PB) will be purely contractual in nature for a specified period. Initially, it will be for a period of two years. The contract may be renewed on completion of contractual period depending on the performance and suitability of the officer at Bank's discretion and needs of the Bank. Non-renewal of the contract of service with the bank before expiry of the previous period of contractual service shall automatically terminate the service of these officers on the last date of the previous period of contractual service. These officers shall also have the option to renew or not to renew the contract of service at the time of expiry of current term of contract.

The said Rule clearly states that the appointment is purely on contract basis for a specified period, which may be renewed on completion of the contract period, depending upon the performance, suitability and based on needs. After expiry of contract service, the service will be automatically terminated on the last date of the period for which appointment is given, if not renewed.

12. In the light of the above said statutory provision empowering the bank to renew the contract appointment on completion of contract period depending upon the performance and suitability as well as need, a discretion is vested with the bank. The requirements to be satisfied by the Petitioner for renewal of contractual appointment is performance, suitability and need. In the counter affidavit filed by the Respondents it is clearly stated that the Petitioner's performance is the lowest with 25.47%, whereas the required/minimum performance is to an extent of 60% of achieving the target. It is also stated in the counter affidavit that out of 59 persons appointed as Officers on contract basis, contract was not renewed only for 8 persons including the Petitioner. As rightly contended by the learned Senior Counsel for the Respondents, mere appreciation letters for encouraging the staff cannot be treated as achievement of performance. The Petitioner has not reached 60% of the target to reach minimum prescribed performance, which is an eligibility/mandatory requirement for renewing the contract appointment. Thus, the allegation of discrimination is

not established by the Petitioner in the light of the counter affidavit filed.

13. It was specifically stated in the advertisement dated 27.2.2007, pursuant to which the Petitioner applied, that the vacancies were notified for appointment on contract basis initially for a period of two years. It is not the case of the Petitioner that Rule 4, referred above, is not applicable to him. The Petitioner having been appointed in terms of the advertisement and his service is governed under Rule 4, he is bound by the said terms and conditions.

14. The appointment having been made for a term of two years, the Petitioner is bound by the terms of the contract appointment and the renewal of the contract appointment for further period is not automatic and it is based on performance, suitability and need.

15. The circular relating to permanent absorption applies to those contract appointees, who are in the service of the bank as on 14.7.2010. The Petitioner was not serving as contract employee as on 14.7.2010 and as per the circular the candidates must have achieved 60% targets during the year 2009-2010. Thus the Petitioner is not entitled to rely on the said circular to sustain his contentions.

16. Petitioner's contract appointment from 20.8.2007 to 19.8.2009 is not disturbed. The renewal of contract for a further period cannot be demanded as a matter of right as extension of service is within the employer's discretion. The view taken by the employer to grant or not to grant such extension is for the interest of the employer or the establishment. At best, Petitioner can claim a right to get considered. Petitioner's claim was also considered and based on his inadequate performance the impugned order is passed. The non-renewal of contractual appointment based on the performance appraisal made by the Respondents cannot be treated as illegal in the light of the statutory provision and it attaches no stigma in the career of the Petitioner. Petitioner is also bound by the clause contained in the appointment order. Even though renewal of the contractual appointment is contemplated, the said clause only gives a right to get considered and not beyond that.

17. In the light of the said statutory Rule and the Petitioner having not achieved his target of 60% and his performance being only 25.47% during the entire service of 2 years, he was found not suitable by the Respondents. Thus, the Petitioner is not entitled to seek regular appointment or renewal of contract appointment for further period. No case is made out to interfere with the impugned order passed by the Respondents.

The writ petition is dismissed. No costs.