
(2015) 05 KL CK 0125

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26042 of 2010 (E)

C. Viswanathan

APPELLANT

Vs

Chairman, South Malabar Gramin Bank and Others

RESPONDENT

Date of Decision : 20-05-2015

Acts Referred:

Citation : (2015) 3 LLJ 24

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : P.V. Kunhikrishnan and Hanson P. Mathew, for the Appellant; Devan Ramachandran, K.M. Aneesh and Nirmal S., Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.V. Ramakrishna Pillai, J—The petitioners, who had applied for the post of Full Time Messenger in the respondent bank, has come up before this Court with these writ petitions aggrieved by the non inclusion of their names in the select list. They also allege that the candidates selected were unqualified and the select list is against the Recruitment Rules.

W.P.(C) No. 26042 of 2010

? The petitioner responded to Ext. P1 notification issued by the respondent bank inviting application to the post of Full Time Messenger. As the petitioner was not included in the final list, he challenged the same by filing WP(C) No. 20910/2008. The said writ petition was allowed and selection was set aside by this Court. The respondent bank took the matter in writ appeal, which was allowed; and the respondent bank was directed to consider the claim of the petitioner and the selected candidates based on para 53 of the decision of the apex court in the Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 . The petitioner alleges that though the direction

was to consider the eligibility of each candidates separately, without doing so, the petitioner's claim was rejected by the bank, as per Ext. P7, stating that as per the records, the petitioner has abandoned the job in the year 2004-05. According to the petitioner, he had worked in the bank since 1992 except for a period during which, he was under treatment in connection with a surgery. It was also pointed out that during the said period, he has received bonus also. According to the petitioner, if the daily wages register and other records for the period 1992 to 2003 maintained in Kakkor Branch of the respondent bank are verified, it could be seen that he had worked in the bank for a long time. He further alleges that Ext. P8 would reveal that the candidates, who had not completed 10 years of service, are also included in the list.

W.P.(C) No. 18947/2011

? The petitioner alleges that though he had applied to the post of Full Time Messenger in the respondent bank, he was not included in the list and several unqualified candidates were included in the list against the Recruitment Rules. The petitioner approached this Court with WP(C) No. 14333/2009, which was heard along with connected cases. Though the writ petition was allowed, the same was challenged in WA No. 2122/2009 filed by the respondent bank. The writ appeal was disposed of along with other connected cases with certain directions to the respondent bank. The petitioner points out that the petitioner was given liberty to bring to the notice of the respondent bank regarding the non-inclusion of eligible persons and the alleged inclusion of ineligible persons. He alleges that though request was made, the 1st respondent has not furnished any details with respect to the order passed or the list prepared. He further alleges that he was given to understand that the respondent bank followed the earlier list without any modification. Most of the candidates included in the list are unqualified to be appointed to the post of Full Time Messenger; it is alleged.

W.P.(C) No. 18949/2011

? The petitioners allege that they were appointed as temporary Full Time Messengers on daily wages from the list furnished by the Employment Exchange. According to them, as on 30.06.2007, petitioners 1 to 3 have worked 1034, 977 and 939 days respectively with the respondent bank. Though they were interviewed on the basis of the application submitted to the post of Full Time Messenger/Driver-cw/w-Messenger in pursuance of the recruitment notice dated 27.03.2008, they were not selected. Accordingly, they challenged the list in WP(C) No. 15027/2008. Though it was allowed, the respondent bank took the matter in WA No. 2123/2009, which was disposed of along with connected cases by Ext. P5 judgment, directing the management to consider the claims of the candidates on the basis of the decision in the Secretary, State of Karnataka and Others v. Umadevi and Others (supra). The petitioners allege that however, the 1st respondent has allowed the original list to continue. They further pointed out that they are more qualified than respondents 3 to 41 and others, who are even now working on the basis of Ext. P4 list. They further allege that the rejection of

their claim is unjustifiable.

As directed by this Court, the respondent bank has filed an affidavit dated 30.04.2013 along with the names of 112 persons included in the select list. In the affidavit, it is stated that the respondent bank has verified the entire select list with reference to the judgment in WA No. 2274/2009 and connected cases with specific reference to the operative portion as to whether all the persons included in Ext. P9 referred in the judgment are eligible for regularization as held by the apex court in para 53 of the judgment in *Secretary, State of Karnataka and Others v. Umadevi and Others* (supra). It was stated that out of 112 persons included in the select list, 105 persons were engaged in the respondent bank as daily wagers for more than 10 years as on the date of appointment. It is further stated that as per the dictum laid down in *Secretary, State of Karnataka and Others v. Umadevi and Others* (supra), as a onetime measure, the service of irregularly appointed persons, who have worked for 10 years or more, could be regularized. According to the respondent bank, those 105 persons were in continuous service for more than 10 years; and they were in service for more period than that of the petitioners; and hence, they are eligible for appointment to the regular vacancy. It is further stated that the petitioner in WP(C) 26042/2010 has less than 10 years of service; and he has discontinued and abandoned the job; and hence, he is not eligible for appointment as he is not coming under the ambit of the dictum laid down by the apex court in *Secretary, State of Karnataka and Others v. Umadevi and Others* (supra). It is further stated that out of the remaining seven persons, four persons belong to Scheduled Caste, two persons belong to physically handicapped/physically challenged and one person belongs to Ex-Servicemen. It was also stated that this Court permitted the respondent bank to consider the case of the candidates from the categories of SC/ST, physically handicapped and Ex-Servicemen separately. Therefore, it was contended that all the candidates in the select list were included in conformity with the orders of this Court.

2. The respondent bank again filed yet another affidavit on 24.01.2014. Along with the affidavit, the respondent bank has produced the particulars pertaining to 111 Full Time Messengers and one Driver-Cum-Messenger, who have been appointed. In the affidavit, it is stated that the respondent bank has considered the date of commencement of engagement and the number of days worked in each year for the previous 10 years as on 30.06.2007 and continuous engagement on 30.06.2007 in compliance of the mandates in *Secretary, State of Karnataka and Others v. Umadevi and Others* (supra). It was further alleged that the petitioners in WP(C) Nos. 26042/2010 and 18947/2011 were not in the engagement roll as on 30.06.2007 as they had abandoned their engagement prior to the said date. In the place of the petitioner in WP(C) No. 26042/2010, his wife was engaged on daily wages; and she is continuing as daily wage employee. It is further stated that the petitioners in WP(C) No. 18949/2011 has not completed the required engagement for 10 years as daily wage employee during the period prior to 30.06.2007. In answer to a specific query raised by

this Court on 10.01.2014 regarding the number of present vacancies in the cadre of Full Time Messenger, it was stated that the post of Full Time Messenger does not exist on the date of filing of the aforesaid affidavit as the said cadre has now been replaced with the post of Office Attendant (Multipurpose), for which there are 125 estimated vacancies for the financial year 2013-14, to which the appointments are now governed under the RRBs (Appointment and Promotion of Officers and Employees) Rules, 2010.

3. Arguments have been heard.

4. The definite case of the petitioners is that the respondent bank has ignored the directions given by this Court in the judgment in WA No. 2122/2009 & connected cases. There was a specific direction by the Division Bench of this Court to consider each case of the petitioners separately to examine whether he would come within the ambit of para 53 of Secretary, State of Karnataka and Others v. Umadevi and Others (supra). In Secretary, State of Karnataka and Others v. Umadevi and Others (supra), the apex court has held that those, who worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals, should be regularized as one time measure. The petitioner in WP(C) No. 26042/2010 alleges that he worked in the bank for 13 years. Though it was contended by the respondent bank that the said petitioner has abandoned his job, Ext. P14, which is a copy of the provident fund account issued by the Employees Provident Fund Organization to the writ petitioner in WP(C) No. 26042/2010, would indicate that the said petitioner's case is true.

5. It was submitted by the learned Standing Counsel for the respondent bank that Ext. P13 in WP(C) No. 26042/2010 is not the copy of the attendance register maintained by the bank. The learned counsel for the petitioner in WP(C) No. 26042/2010, per contra, would submit that actually, after paying daily wages, the bank itself cancelled the slip. A copy of the cancelled entry of the bank dated 30.05.2008 for the period 05.04.2008 to 05.04.2008 is produced as Ext. P15. So, that itself would show that Ext. P13 in WP(C) No. 26042/2010 is not a fabricated document. It is asserted by the learned counsel for the petitioner in the said writ petition that even after 2008, the said petitioner has worked in the respondent bank on daily wages on several occasions and the respondent bank is purposely harassing the petitioner since he has approached this Court. The learned counsel, inviting my attention to Ext. P3 list, submitted that several persons, who are junior to the said petitioner and who have not attended the bank for the last several years, are included in the final list.

6. The learned counsel for the petitioners in WP(C) Nos. 18947/2011 & 18949/2011, inviting my attention to Annexure B list produced by the respondent bank along with the affidavit dated 24.01.2014, would submit that several persons, who are not qualified, are included in the list. On a perusal of Annexure B, it would reveal that the following candidates have not worked under the respondent bank for sufficient time during the relevant period;

As Annexure B, which was produced by the respondent bank, itself would reveal that the persons, who are not qualified, are included in the select list, I have no hesitation to hold that the allegation projected by the petitioners in the writ petitions are true. Therefore, this Court is of the definite view that the matter requires a re-look by the respondent bank.

In the result, the writ petitions are disposed of asunder;

? The list prepared and the consequential orders passed pursuant to the judgment of this Court in WA No. 2122/2009 & connected cases are quashed since the list/orders passed by the 1st respondent are not in compliance with the judgment in the aforesaid writ appeals.

? The respondent bank is directed to reconsider the case of the petitioners in the writ petitions for appointment to the post of Full Time Messenger/Office Attendant within a period of three months from the date of receipt of a copy of this judgment.

? Needless to say that the case of each applicant shall be considered separately to ascertain whether he/she would come within the ambit of para 53 of Secretary, State of Karnataka and Others v. Umadevi and Others (supra).