
(2001) 12 KL CK 0045
In the High Court Of Kerala
Case No : W.A. No. 352 of 1994

Davis Kuriape

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

Banking Regulation Act, 1949 — Section 45, 45(1), 45(5)

Citation : (2002) 1 ILR (Ker) 311

Hon'ble Judges : B.N. Srikrishna, C.J;M. Ramachandran, J

Bench : Division Bench

Advocate : Babu Thomas and Marykutty Babu, for the Appellant; T.P. Kelu Nambiar P.G. Parameswara Panicker, P. Gopal and P.S. Sreedharan Pillai, for the Respondent

Judgement

B.N. Srikrishna, C.J.—These Writ Appeals can be conveniently disposed of by a common judgment since they raise the same issue as to the manner of fitment of employees of one bank into another on amalgamation under a Scheme falling within the purview of Section 45 of the Banking Regulation Act, 1949 and the manner of considering the equivalence of the experience of the employees in the transferor bank vis-a-vis those of the transferee bank. All these appeals arise out of a common judgment dated 30.11.1993 delivered by the learned single Judge disposing of the Original Petitions.

2. The delay in presenting W.A. No. 361 of 1994 against the judgment arising out of O.P. No. 9734 of 1988 is condoned, the appeal is admitted and heard by consent.

3. Truly speaking, the contentions urged before us are no longer res integra, having been decided by the judgment of a Division Bench of this Court and by a later judgment of the Supreme Court also. We shall, however broadly refer to the facts and the contentions and indicate how they are already decided by the said judgments.

4. For the purpose of delineating the factual matrix, we shall take the facts in W.A. No. 352 of 1994 as illustrative. The appellant in this appeal joined a private bank known as Bank of Cochin Limited on 1.6.1973. He was promoted as Junior Officer on 1.11.1976, further promoted as Grade III Officer on 1.7.1980 and then to the post of Branch Manager in 1985.

5. The Bank of Cochin Limited run into financial difficulties and was hardly able to carry on its banking business. Considering the overall public interest, the Government of India in consultation with the Reserve Bank of India imposed a moratorium on banking operations in Bank of Cochin Limited with effect from 27.4.1985. At this stage, it was open to the Government of India to direct winding up of the banking operations of the said bank, which would have caused serious prejudice to the interest of the public and depositors apart from throwing out of employment large number of employees employed in several branches of this bank. Instead of directing winding up of the Bank of Cochin Limited, Government of India in consultation with the Reserve Bank of India evolved a Scheme for amalgamation of Bank of Cochin Limited with State bank of India. This Scheme was placed before Parliament, approved and came into operation with effect from 23.8.1985. The Scheme is produced at Ext. P1 of the Original Petition. This Scheme has been framed under the provisions of Section 45(1) of the Banking Regulation Act, 1949. After the Scheme was brought into force, the State Bank of India took the erstwhile employees of the Bank of Cochin Limited into its employment and fitted them into appropriate grades and paid them the salary and benefits which were paid to its employees of corresponding qualification and experience.

While doing so, for the purpose of assessing the equivalence of experience, the State Bank of India decided that the services rendered by the employees of the Bank of Cochin would not be taken into account for any purpose other than the purpose of terminal or leave benefits and certain other perquisites. This meant that the erstwhile employees of the Bank of Cochin Limited absorbed as employees of the State Bank of India would be treated as having been employed in State Bank of India in appropriate grades from the date on which such absorption took place. This led to agitation by the erstwhile employees of the Bank of Cochin Limited, who felt that this was discrimination against them and also apprehended that their promotion prospects would be seriously prejudiced. A dispute was raised in this behalf by a representation made to the Reserve Bank of India. The Reserve Bank after considering the representation made by the said employees as well as by the State Bank of India decided that for the purpose of implementing the Scheme and deciding the equivalence of experience, every two years service in the Bank of Cochin Limited would be treated as equivalent to one year's service in the State of India.

6. The aggrieved employees filed Original Petitions challenging the implementation of the said policy directive of the Reserve Bank on several grounds. The Original Petitions were heard and the learned Single Judge has

dismissed them. Being aggrieved, the appellants are before this court.

7. S. 45 of the Banking Regulation Act, 1949 empowers the Reserve Bank of India to apply to the Central Government for suspension of business by a banking company and to prepare a Scheme of reconstitution or amalgamation. Sub-section (5) of Section 45 enumerates several provisions which may be contained in any such scheme of amalgamation. Clause (i) of Sub-section (5) of Section 45 is relevant to us and reads under:

"(i) the continuance of the services of all the employees of the banking company (excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947 are specifically mentioned in the Scheme) in the banking company itself on its reconstruction, or as the case may be, in the transferee bank at the same remuneration and on the same terms and conditions of service, which they were getting or as the case may be, by which they were being governed, immediately before the date of the order of moratorium;

Provided that the Scheme shall contain a provision that:-

xx xx xx xx (ii) the transferee bank shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of service as are, at the time of such payment or grant, applicable to the other employees of corresponding rank or status of the transferee bank subject to the qualifications and experience or the said employees being the same as or equivalent to those of such other employees of the transferee bank:

Provided further that if in any case under Clause (ii) of the first proviso any doubt or difference arises as to whether the qualification and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank, the doubt or difference shall be referred, before the expiry of a period of three years from the date of the payment or grant mentioned in that clause to the Reserve Bank whose decision thereon shall be final."

The obligation of the transferee bank under the scheme containing provisions as indicated in Clause (i) of Sub-section (5) of Section 45 would be grant, not later than three years, to the absorbed employees the same remuneration and the same terms and conditions of service as are paid to other employees of corresponding rank or status of the transferee bank provided the qualifications and experience of such employees are the same or equivalent. The second proviso to Clause (i) makes provision for resolution of disputes with regard to equivalence of qualifications and experience which are to be decided by the Reserve Bank whose decision is rendered to be final.

8. The first contention urged on behalf of the appellants is that the decision taken by the respondents results in total washing out of the services that the erstwhile employees of the Bank of Cochin Limited had rendered prior to the date

of amalgamation. In our view, this contention is misconceived. All that the amalgamation scheme has done is to ensure that the employees of the Bank of Cochin Limited are not rendered jobless and that they are amalgamated into an existing viable and stable bank. Considering the difference in the nature of work done by different branches, judged by various factors such as volume of business including the quality of service, efficiency of organisation, range and volume of business transacted in the transferor and transferee banks, it was decided by the Reserve Bank that two years service in the Bank of Cochin Limited would be equated to one year service in State Bank of India. As pointed out by the Supreme Court in *New Bank of India Employees Union and another Vs. Union of India and Others*, , and the judgment of the Division Bench of this court in *State Bank of Travancore v. Its Association* 1978 Lab. I.C. 1343, when a scheme is framed under S. 45 for amalgamation, judicial review thereof is permissible only to a very narrow extent. Particularly when a dispute or difference arising with regard to the equivalence of experience has been decided by the Reserve Bank in exercise of its powers under the second proviso to Section 45(5)(i), the High Court in writ jurisdiction cannot sit in appeal over such judgment. It can only interfere in extreme cases of arbitrariness or unreasonableness. As to the criteria adopted for judging the equivalence of experience in two different banks which are being amalgamated, the Reserve Bank being an expert body in banking operations would be the best Judge. The High Court is neither equipped, nor capable of handling such a delicate task which requires expertise and deep knowledge of banking operations. In the present case, however, we find that apart from contending that the amalgamation scheme resulted in totally depriving the employees of the Bank of Cochin Limited their services no other grounds have been made out. We are unable to accept the contention that the decision taken by the Reserve Bank was in any way unreasonable, capricious or arbitrary so as to call for interference in exercise of our powers under Article 226 of the Constitution.

9. In the case of another bank in the State of Kerala, i.e., Cochin Nair Bank, which was also taken over by the State Bank of Travancore, when a similar circumstance had arisen, a Division Bench of this court in *State Bank of Travancore v. Its Association* (1978 Lab. I.C. 1343) was called upon to decide the correctness of an identical contention. Rejecting the contention, the court pointed out that there is nothing in the context or the circumstances of the statutory provision to limit the content of the term "experience", to mere quantitative assessment and not to assessment of the same on a qualitative basis. Experience may generally connote length or duration of service in a profession or institution, but the Court cannot altogether rule out the richness and the variegated nature of the experience in the matter of service in a bank. The quality of service, efficiency of organisation, and the range and volume of business transacted must all contribute to the experience gained in a bank. The court held that it was not possible to say that these factors would not comprise the term "experience" as used in the relevant provision of the Banking Regulation Act. Respectfully, we

agree with this view. While judging the equivalence of experience of an employee of the erstwhile Bank of Cochin Limited, it was open to the transferee bank, that is the State Bank of India, and thereafter to the Reserve Bank of India upon the dispute, to go into all these factors and decide what weightage should be given to "experience" of every employee in the transferor bank while fitting such employee in the transferee bank. We are unable to hold that there is any unreasonableness in what has been done.

10. We are also fortified in our view by a recent judgment of the Supreme Court in *New Bank of India Employees Union and another Vs. Union of India and Others*, . That was a case of amalgamation of two nationalised banks. A contention was urged that there was hardly any difference between the work done in one nationalised scheduled bank as against that in another nationalised scheduled bank. The amalgamation was done by a scheme evolved by the Central Government. The Supreme Court pointed out that when such an exercise is carried out, there is no question of giving a hearing to the employees of the transferor bank as no change in conditions of service is envisaged. It was further held that the legal position is fairly settled that no Scheme of Amalgamation can be foolproof and a court would be entitled to interfere only when it comes to the conclusion either that the scheme is arbitrary or irrational or has been framed on some extraneous considerations. Rejecting the argument that both the transferor and transferee banks being nationalised banks and the recruitment to both the banks being through the same Selection Board, there was no justification in fixing a ratio of 2:1 of the services of transferor bank and transferee bank, the Supreme Court took the view that this was a matter which had to be considered carefully by the transferee bank depending on several factors and as long as there was application of mind of all the relevant factors (in our case it has been done both by the transferee bank as well as the Reserve Bank of India) it was not amenable to judicial review, since the Reserve Bank would have to carry out the comparative study of the business of the two banks, the rate of promotion, the higher productivity and larger measure of responsibility and higher average business per branch of the transferee bank as compared to the transferor bank and other germane considerations.

11. In our view, the judgment of the Supreme Court in *New Bank of India Employees' Union (supra)* and the Divisional Bench of our High Court in *State Bank of Travancore (supra)* effectively answer and negate all three contentions urged in these appeals. They also dispose of the contention of the appellants that in passing such orders the Reserve Bank had exceeded its jurisdiction its jurisdiction under the second proviso to Section 45(5)(i). In our view, the Reserve Bank did possess jurisdiction to entertain the dispute with regard to the equivalence of qualification and experience and it has been done on relevant, germane and proper considerations. Thus it is not open for this court in writ jurisdiction to interfere with the jurisdiction properly exercised by the Reserve Bank.

12. Learned counsel for the appellants faintly contended that the Reserve Bank decision was bad because no personal hearing was given to the employees individually or through their staff unions. In our view, this contention too has no merit. In fact, it is no longer *res integra* as it has been specifically reiterated in the judgment of the Supreme Court in *New Bank of India Employees' Union* (*supra*).

13. Learned counsel for the appellants referred to the judgment in *K.I. Shephard and Others Vs. Union of India (UOI) and Others*, . This judgment does not carry the appellants any further. In fact, this judgment has been specifically referred to and distinguished by the Supreme Court in *New Bank of India's* case (*vide* paragraph 19 of the judgment).

14. A reference was also made by the appellants to *The Chairman, Canara Bank, Bangalore Vs. M.S. Jasra and others*, (at paragraphs 9 and 10). In our view this judgment is of no avail to the appellants. After comparing a similar scheme made in the case of amalgamation of Lakshmi Commercial Bank with the Canara Bank, the Supreme Court held that in such an amalgamation scheme the transferee bank cannot discriminate between the amalgamated employees and its other employees of corresponding rank or status. The only right of such an employee whose service is so continued is, therefore, to claim parity with the employees of the transferee bank itself of corresponding rank or status subject to having equivalent qualification and experience and no more. These observations are not of much help to the appellants' case for the dispute before us in the appeals is not, whether after placing the appellants in an appropriate grade, there has been discrimination against them as compared to the employees of same grade, same qualification and same experience of the transferee bank. The dispute before us is as to the manner of placing of the employees of the transferor bank in the transferee bank by finding out the equivalence of qualification and experience. Mr. Babu Thomas complained that there is a case of such discrimination put forward in another Original Petition. We are not concerned with the facts of that case and we refrain from saying anything further on that.

15. In our view, the reliance placed on the judgment of the Supreme Court in *State Bank of Travancore Vs. Elias Elias and Others*, by the appellants, is of no use. The Supreme Court said that finality is not attached to any other matter decided by the Reserve Bank except the decision on equivalence of qualification and experience. In the present case, we find no other matter decided by the Reserve Bank. The dispute was precisely with regard to matters about which finality attaches to the decision of the Reserve Bank.

16. Finally, a judgment of the learned single Judge of this court in *Leelavathi v. Chief Regional Manager* (1986 KLT 75) was referred to. This was also a case of *Bank of Cochin Limited*. Certain observations in paragraph 8 were highlighted to the effect that there is no basis for the assumption that in rank, status, qualification, equipment etc. any officer of the Bank of Cochin is inferior to a clerk of the State Bank awaiting promotion to the J.M.O. cadre; nor was it

possible to assume that, while preparing the scheme, sanctioning it and giving effect to it, the three authorities concerned i.e. the Reserve Bank, the Central Government and the State Bank, had no bona fide assessment at all about the suitability of each and every transferred employee for absorption. In our view, this observation cannot be read to mean that the Reserve Bank had no jurisdiction to decide the equivalence of the employees of the transferor bank with the employees of the transferee bank. If they are to be so read, then they run counter to the observations of the Supreme Court in *New Bank of India* (supra) and must be held to be bad law.

17. Having considered the matter from all angles, we are satisfied that the transferee bank exercised the right of judging the equivalence of the employees of the transferor bank, based on qualifications and experience, with the employees of the transferee bank; the Reserve Bank resolved the dispute by properly exercising its jurisdiction under the statutory Scheme. Finally the terminal benefits of the employees of the transferor bank are not in any way prejudiced despite the ratio of 2:1 given to the experienced in the transferor bank. The terminal benefits have been guaranteed by Circular No. PER 44 dated 22.5.1987 issued by the State Bank of India.

18. In the result, we find no substance in these appeals. The contentions urged by the appellants are no longer *res integra* as they have been negated by the decisions of the Supreme Court and of this Court referred to earlier. All the appeals fail, and they are hereby dismissed.