(2004) 10 KL CK 0040

In the High Court Of Kerala

Case No : O.P. No. 30402 of 2002 (T) and O.P. No. 34077 of 2002 (F)

E.K. Andrew APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 12-10-2004

Acts Referred:
Banking Regulation Act, 1949 — Section 45, 45(5)
Constitution of India, 1950 — Article 226

Citation : (2005) 106 FLR 954

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : T.L. Ananthasivan and K.M. Joseph, for the Appellant; P.G. Parameswara Panicker, for the Respondent

Judgement

M. Ramachandran, J.—Two original petitions, filed by one and the same person, are being jointly heard and disposed of, as requested for by the parties. A brief history leading lo filing of these two petitions might be necessary, to understand the nature of the claims.

2. While working as Deputy Manager of erstwhile Bank of Cochin, the petitioner had been appointed as Chairman of the Bank for a period of two years, during 1979. He had been reappointed again with the approval of the Reserve Bank of India, for a fresh period of three years, but could not complete the term, since he was removed from the office on 2.4.1983. The appeal filed by the petitioner had been rejected by the Government, but because of directions issued by this Court in O.P. No. 9763 of 1984, it was heard afresh. The Government had stuck to its initial decision. This necessitated filing of O.P. No. 7316 of 1991. The original petition was allowed and the decision, was confirmed by judgment in Writ Appeal No. 906 of 1992. The finding was that the removal of the petitioner from the post of Chairman was in violation of principles of natural justice.

3. Parallel proceedings were also there in the meanwhile. There was disqualification consequent to the removal of the petitioner for holding any

position for a period of five years, which had expired by 12.4.1988. An original petition had been filed as O.P. No. 7517 of 1988 praying for a declaration that he was to be deemed as continuing as an officer of the Bank of Cochin. In the meanwhile, by an amalgamation proceedings, the bank of Cochin became part of the State Bank of India on 26.8.1995. The claim was that he should be considered as working as a Deputy General Manager in the State Bank, a post he was holding at the time of appointment as Chairman in the Bank of Cochin. He was entitled to continue at least from 12.4.1988 in that post. Overruling the contentions of the State Bank of India, and the Reserve Bank, by Ext. P.1 judgment, ultimately it had been held that the petitioner was entitled to continue in the bank, since he had been removed from the position of Chairmanship alone, and therefore had a right to continue in office, at least in the category from Which he had; been promoted. This was relying on a judgment passed by the Supreme Court in Anil Kumar Soni v. Managing Director, Punjab Financial Corporation and Ors. 1991 (63) FLR 591 (SC). By that time, all the other hurdles had been got cleared, since it had been held by this Court that the termination of service as the Chairman also was irregular. Against the judgment in O.P. No. 7317 of 1998 dated 31.1.1997, a writ appeal had been filed as W.A. No. 721 of 1997. The judgment had been upheld. The Bank had filed Civil Appeal No. 7703 of 1997 before the Supreme Court. The appeal was dismissed on 30.1.2001.

4. The result was to be that the petitioner was to be deemed as continuing in service all through out, unaffected in any manner. The only contentious issue was as to what would have been the position the petitioner could have been accommodated, on the expiry of the period of five years, for which he had been nominated as the Chairman. The petitioner had contended that he was entitled to be designated and accommodated as Deputy General Manager, and was eligible to the arrears of emoluments and perquisites arising therefrom.

5. On the plea that there was no follow up action being taken, the petitioner had initiated proceedings under the Contempt of Court Act by filing C.C.C No. 292 of 1997, even during the period whim the matter was pending before the Supreme Court. Such proceedings were stayed by the Supreme Court. After the closure of the proceedings by the Supreme Court, a petition had been filed to (sic) the Contempt of Court case. It may also be relevant to note that the petitioner had attained the age of superannuation, normally stipulated for Bank officers, by 30th of November, 1992. Proceedings under the Contempt of Court Act appear to have been closed on the Bank making a submission that all the consequential benefits had been extended to the petitioner, as admissible under law.

6. Pointing out that there has not been full compliance, the petitioner had filed a petition as C.M.P. No. 31048 of 2002. When the matter came up before the Division Bench, taking notice of the plea of the respondent, the Court held that it was not proper for them to consider the merits of the rival claims of the parties regarding the interpretation in the judgment. Noticing the payments already made, leave had been reserved in favour of the petitioner to claim any more

amounts that might have been due or payable to him by fresh proceedings, including petition under Article 226 of the Constitution of India.

7. O.P. No. 30402 of 2002 came to be filed in the aforesaid circumstances. The petitioner submits that large amounts are due and payable to him as arising from the declarations by the judgment; there should be a direction to the bank to release such payments expeditiously.

8. The relief prayed for in O.P. No. 34077 of 2002, however, lies in a narrow compass. The plea is that dues payable to the petitioner from time to time had been unnecessarily delayed and the Bank had ventured legal proceedings at their own risk. Therefore, when such dues were finally paid, including arrears of pay, there should have been no legal right for them to withhold the interest that was due and payable. The Bank was therefore to be directed to pay interest at the rate of 18% and it should be payable form the date on which they became due.

9. Sri. Ananthasivan appeared for the petitioner in O.P. No. 30402 of 2002 and I had heard Mr. K.M. Joseph in O.P. No. 34077 of 2002. Standing Counsel, Mr. P.G. Parameswara Panicker entered appearance for the State Bank of India.

10. Positive orders had come, to be passed in favour of the petitioner from the date of Ext. P-1 judgment. Although, a writ appeal followed by a civil appeal had been filed therefrom, the observations had been confirmed and petitioner became entitled to the fruits of his labour thereby. The termination orders, issued during the year 1984 also was set it naught. Therefore, the legal position was that he was entitled to be considered as having continued in the position as Chairman with all perquisites for the full tenure of the five years period. The position cannot be disputed and the petitioner will be entitled to the remuneration as is admissible to a Chairman, normally up to June, 1985. Because of the orders in Ext. P-1, the petitioner has to be considered as entitled to continue in the Bank uninterruptedly from that day onwards.

11. Mr. Ananthasivan argues that petitioner was to be given the position of Deputy General Manager in the State Bank, as his right for reinstatement has been upheld. Salary and all other benefits, as are available to an officer of that category, were to be paid to him uninterruptedly thereafter. The amalgamation according to him, has no adverse legal effect. Reference is made by the Counsel to Section 45 of the Banking Regulation Act, 1949. The proviso to Section 45(5)(i) states that the banking company is to grant the employees the same remuneration and conditions of service as are applicable to employees of corresponding rank or status of a comparable banking company to be determined for this purpose by the Reserve bank. The second proviso is to the effect that the transferee bank should pay not later than the expiry of three years to the employee the same remuneration as applicable to the other employees of corresponding bank or status of the transferee bank subject to the qualifications and experience of the said employees and if any doubts or difference arises as to the qualification or status, the doubt or difference shall be referred, before the

expiry of period of three years from the date of payment or grant to the Reserve Bank, whose decision thereon shall be final. It is pointed out that the provision as above results in an interpretation whereunder the petitioner should have been accommodated as a Deputy General Manager, since there was no issue placed before the Reserve Bank concerning a doubt in the status of the employee. When the final decision was that he was entitled to continue as Deputy General Manager after his tenure as Chairman, corresponding position would have been the post of Deputy General Manager alone. The notional accommodation awarded was as Officer of G.M.G. Scale-IV alone. The arrears of pay and other emoluments were computed on such basis.

12. Mr. Ananlhasivan attacks the proceedings which recognised the petitioner as an officer in the pay scale of S.M.G.-IV. According to him, it was two places below than the pay scale and status of Deputy General Manager of the State Bank. In fact, this is one of the main issues that has been highlighted by the petitioner. We may examine the above with reference to the pleadings that are available.

13. The learned Standing Counsel for the Stale Bank of India submits the automatic application of Section 45 of the Banking Regulation Act could not have been there, since the amalgamation had taken place in the year 1985, whereas finality to the legal proceedings as concerning the petitioner came only in the year 2001. The fitment proceedings in respect of other staff members had been completed, a decade back. Acceptable positions had to be worked out independently. When there was obligation for implementing the judgment, it could have been only notional, since the petitioner had attained the age of superannuation way back in 1992. It is submitted tint at the time of amalgamation, the claims and conditions of service had been circulated for general information as early as on 23.8.1985. The Officers of the Bank of Cochin, who were available for being taken over, consisted of persons in four categories, namely Junior Officers and Officers in Grade-III, Officers in Grade-II and Officers in Grade-I respectively in the pay scales of Rs. 585-1540, 700-1750, 780-1900 and they were thereupon decided to be placed in Junior Management Grade Scale-I, Middle Management Grade Scale-II and Middle Management Grade Scale-III. The first two categories are coming as JMGS-I. The pay scales of the three groups were Rs. 1175-2275, 1825-2925 and 2560-3250. As a Deputy General Manager was not there at the time of actual takeover, a consideration of equation as respects that post was not necessary at that time. According to them, the petitioner was notionally fitted in the SMG-IV category i.e., above JMGS-I.

14. Counsel further points out that the post of Deputy General Manger in the State Bank of India is a Scale-VI post, which is a selection post from Senior Scale Manager Grade Scale-V. The feeder category for this post is Assistant General Manager. As far as the Bank of Cochin was concerned, the service condition was that the post of Deputy General Manager was a selection post from the officers category alone. Thus, the submission is that it is not as if there was no application of mind, nor was there any arbitrariness, and the nomenclature of the

post alone could not have been the criterion. The petitioner had been accommodated taking notice of the substantive rank, which he had been occupying in the Bank of Cochin.

15. Section 45 of the Banking Regulation Act speaks about the general powers of the Reserve Bank in matter of amalgamation. A scheme is envisaged to be made by the Reserve Bank and Sub-section 5 is to the effect that it may contain provisions for all or any of the matters listed as (a) to (j) and residuary items. The argument of the learned Counsel is that the three year period referred to in Section 45(5)(i) cannot be blindly followed, because, at the tune of declaring moratorium, or at the time of framing scheme of amalgamation, the petitioner was not reckoned as an employee on the rolls of the Bank of Cochin. His rights had been declared only years later and the State Bank could not have been condemned for not anticipating such matters, as the clock could not have been set back. The situation has to be appreciated in a just and equitable manner, giving all possible reliefs to the petitioner, and simultaneously not putting the Bank also to prejudice.

16. Provisos to Section 45(5) of the Act deal with distinct contingencies, the Litter proviso alone speaks about the equation of status to be conferred with the employees of the transferree-bank. According to me, the follow up action taken by the hank sufficiently satisfied the principles underlying Section 45 of the Banking Regulation Act. It would not have been possible for the petitioner to contend that since he was a Deputy General Manager in the Bank of Cochin, he should have been entitled for automatic accommodation to the same position. There was no violation involved in the fixation. Higher scale of pay was always there in the State Hank. As the Chairman, the petitioner was drawing a pay scale of Rs. 2700-3000 only. The pay scale of Deputy General Manager was lower than that, but higher than that of Officer Grade-I, this being Rs. 860-2050. The scale of pay of Chairman as well as Deputy General Manager of Bank of Cochin was lesser than that of officer SMGS-IV of State Bank. The pay scale presently conferred was Rs. 2925-3450, and therefore it did not offend fairness. The Deputy General Manager of State Bank is a promotion post of Assistant General Manger. This post of AGM carried a higher pay scale by two stages than that of the Chairman''s scale prevailing in the Bank of Cochin. We have to essentially take notice of the fact that by comparison, the Bank of Cochin was much smaller than the State Bank and it would not have been proper to hold that the petitioner had to be given a scale admissible to Deputy General Manager of the State Bank, going by nomenclature alone. I do not find anything which comes to the aid of the petitioner in the judgment cited by Mr. Ananthasivan. viz., State Bank of Travancore v. Elias Elias 1970 (21) FLR 342 (SC), as the issues there were totally different as from this case.

17. Therefore, in the mailer of conferring notional accommodation to the petitioner for the purpose of pay, there has not been any error justifying interference of this Court.

18. The next point of dispute to be resolved is about the entitlement to 7 increments, at the time of fixation in the corresponding post, taking notice of the seven years service he had put in (notionally or otherwise as Deputy General Manager).

19. It is seen that the Deputy General Manager was having a lower pay scale than SMGS-1V and taking notice of the salary that had been drawn by him, he had to be appropriately placed. The fixation automatically should have taken notice of the service weightage to which he would have been eligible. In the counter-affidavit, the above aspect is not seen discussed. Data has not been made available by the petitioner. The Bank has a stand that a work sheet had been given along with Ext. P 3, but no objection had come. It is not known at which stage the petitioner''s salary was fixed in the scale of Rs. 2925-3450. It cannot in any case be at the starting of the pay. If there has been any oversight in the matter of appropriate fixation, I direct the State Bank to set right the mistake, and after recalculating the emoluments, they are directed to give the resultant benefits to petitioner in all respects.

20. The next contention is in respect of the total service that was reckonable as far as the petitioner was concerned. Advertence is made to entries in the audited balance sheets, for the years concerned, to indicate that the petitioner had been shown as a person who had reckonable service from 15.6.1961, as he had come over to the Bank of Cochin after rendering a spell of service in another institution, namely Irinjalakuda Catholic, Bank Limited, on its take over, It had been annexed to the Bank of Cochin in 1964. The stand of the State Bank of India is that in respect of other employees, such service has not been taken notice of. According to them, reliance on entries the balance-sheet is misconceived.

21. However, this is a difficult position to accept as coming from the State Bank. Section 45 had been incorporated in the Banking Regulation Act as early as from 1960. An amalgamation could have been there only after observing the mandatory conditions of Section 45. If that be so, past service was allowable to be taken over. The expression in Section 45(5)(i) is continuance of the services of all employees of the banking company which impliedly prohibited cutting off of past service. In Ext. P-1 judgment also reference is made to the services rendered by the petitioner in the Irinjalakuda Catholic Bank Limited from the year 1961 onwards. Situated as it is, the Stale Bank would have been able to produce better evidence to substantiate their contentions that such service was not reckonable not only for petitioner but also with respect to others as well, As this has not been done, I have to go by the averments in the original petition. As far as reckonable service is concerned for the grant of benefits, I hold that there is an error and the date should have been notionally treated as 15.6.1961.

22. In the matter of House Rent Allowance, which normally are benefits payable to the petitioner, it is evident that the full claims have not been appropriately met. As an officer, who was to be deemed as was in the service of the State

bank, he was entitled to the allowances as admissible, as provided by the Officers Service Rules. But, the claims arose only because of declaration by the Court, and formalities and procedures became impossible to be observed. Therefore, without resorting to technicalities, average amount of House Rent Allowance, should be payable to the petitioner for the period concerned, and the respondent-Bank should exercise its discretion in arranging payment, without being arbitrary.

23. The amount of gratuity paid to him is shown as Rs. 30,288/-. Notional salary was to be not anything less than Rs. 12,000/- per mensem during the year 1992, viz. at the time of attainment of age of superannuation. There is no explanation forthcoming as to why the full gratuity of 15 months pay was not granted to him. Balance amount necessarily has to be paid.

24. The claim in respect of privilege leave does not appear to be sustainable as the claim of the petitioner as been successfully met by the respondents, as one without justification.

25. Consequently, there will be a direction that the respondent-Bank should work out and pay to the petitioner the monetary benefits, as referred to in paragraphs 19, 21, 22 and 23 above. If there has been any oversight in fixation, taking notice of his service put in and the notional pay he would have drawn in the SMGS-IV, pay is to be recalculated and consequential benefits paid arising therefrom. This includes any payments that might be there towards Provident Fund as well. The petitioner Will not be entitled to urge any further or fresh claims on the basis of the judgments in any other proceedings, of any nature whatsoever. But, claim for pension, if admissible, could be urged if found sustainable. The claims-including the claim for Deputy General Manager''s pay as available in the State Bank, are not sustainable and are rejected. The original petition is thus allowed in part.

26. Now we may examine, the claim of the petitioner as has been raised in O.P. No. 34077 of 2002. Sri K.M. Joseph submits that there was inordinate delay in the matter of payments and therefore there should be a direction for payment of interest, at the rate of 18%. He refers to the circumstance that in 1988 if petitioner was permitted to join duty he would have had at least a satisfaction of regaining his lost esteem. Negative attitude of the Bank authorities had played havoc in his life and prospects. This requires lobe compensated.

27. But the argument cannot be appreciated as has been presented. We have to note that legal proceedings were pending between the parties and it would not have been possible for a public sector enterprise to ignore the circumstances altogether. The State Bank was not in error at all, since the petitioner had been removed from the position of Chairman of the Bank of Cochin by the Reserve Bank of India. The State Bank of India had come to the scene only because of the amalgamation. They could not have side tracked or ignored the orders passed by the Reserve Bank and the Government of India. It was not a matter

coming within their discretionary jurisdiction. Later on of course taking notice of the legal issues, they were justified in awaiting the judgments of the Courts. Since the legal positions had got cleared only in 2001, after the pronouncement by the .Supreme Court, the liability for payment had finally been settled.

28. Thus, taking notice of the facts of the case, it is evident that they could not have rested on oars midstream. As the Standing Counsel for the respondent Bank points, out, alter the dismissal of the special leave petition, payments had been prompt. Even though the petitioner might have been put to hardship, that does not appeal to be a reason for awarding interests, although, I do not think, there is any principles of res judicata or constructive res judicata operating against the petitioner claiming interest by way of these proceedings. On the merits, I do not find that the Bank has to be mulcted with the liability for payment of interest as claimed. The original petition is dismissed.

29. The monetary benefits directed to be paid, however, are to be worked out and disbursed to the petitioner in two months'' time. I make no order as to costs.