

**(2003) 02 KAR CK 0048**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 41817 of 2001**

M. Krishnappa

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

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**Date of Decision :** 24-02-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Industrial Disputes Act, 1947 — Section 18 (1), 2 (p)  
Industrial Disputes Rules, 1957 — Rule 58

**Citation :** (2003) ILR (Kar) 1676 : (2004) 3 KarLJ 37 : (2003) 2 KCCR 124 SN : (2003) 3 LLJ 1137

**Hon'ble Judges :** P. Vishwanatha Shetty, J

**Bench :** Single Bench

**Advocate :** P.S. Rajagopal, for the Appellant; Sunderswamy Ramdas and Anand, for the Respondent

**Final Decision :** Allowed

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## Judgement

Vishwanatha Shetty, J.—Though posted in Orders list, with the consent of the learned Counsel appearing for the Parties, this petition is taken up for final hearing and disposed of this by Order.

2. The petitioner in this petition is a Senior Assistant working in the establishment of the 1st Respondent-Bank. The petitioner, when he initially joined the Bank he had passed only Pre-University Course examination. However, during the course of his employment, after obtaining the permission from the 1st respondent-Bank, he appeared for Master of Arts Post-graduation degree examination conducted by the University of Mysore under Open University Scheme and obtained Post-graduation degree on 8th March 1990. Open University Scheme is the scheme introduced by the University of Mysore to enable such of those persons who are desirous of obtaining post-graduation degree even without attending the classes or completing the Bachelor's Degree. After obtaining the post-graduation degree, the petitioner made a request with

the respondents to give him two additional graduation increments in terms of Sastry Award as amended by Fifth Bipartite Settlement dated 29th June 1990, entered into between the Employees" of the Banking industry and the Bank Management. The Fifth Bipartite Settlement provides that the graduate employees in the establishment of Banks are entitled for two additional graduation increments with effect from 1st July 1990. The claim made by the petitioner came to be rejected by the Bank by means of its communication dated 4th June 1990, a copy of which has been produced as Annexure-D to the petition. However, the petitioner even after the receipt of communication Annexure-D, made several representations to the Bank to consider his claim of payment of two additional graduation increments. The last of the said representation dated 19th July 1999, a copy of which has been produced as Annexure-F to the petition, was given to the Bank for payment of two additional graduation increments. Further, during the pendency of this petition also, pursuant to the representation given by the petitioner, the Bank by means of its communication dated 18th February 2002, a copy of which has been produced as Annexure-L to the petition, again rejected the claim of the petitioner for payment of two additional graduation increments.

3. Sri P. S. Rajgopal, learned Counsel appearing for the petitioner, in support of the prayer of the petitioner that he is entitled for two additional graduation increments, submitted that even before the amendment of Fifth Bipartite Settlement, such of those employees who had acquired additional qualification of graduation were entitled for payment of two additional graduation increments. In this connection, he drew my attention to paragraph 121(1) of the Sastry Award; and submitted that when the petitioner has acquired Post-graduation degree in the year 1990, in terms of the Fifth Bipartite settlement entered into between the Employees" and the Management of the Bank, it is not permissible for the Bank to deny two additional graduation increments for which the petitioner is entitled. According to the learned Counsel, the object of the Fifth Bipartite Settlement providing two additional graduation increments was to encourage the staff of the Bank to improve the quality of their performance by acquiring higher qualifications and the same are given as an incentive. He submitted that under similar circumstances while considering the similar question, the Division Bench of the Bombay High Court, in the case of STATE BANK OF INDIA v. DEPUTY GENERAL MANAGER, W.P. No. 446/1993 disposed off on 18.9.1998 made in Writ Petition No. 446 of 1993 disposed of on 18th September 1998 has taken the view that the employees who have secured Post-graduation degree without securing a Bachelor"s Degree are also entitled for two additional graduation increments in terms of the Fifth Bipartite Settlement.

4. However, Sri Ramdas, learned Senior Counsel appearing for the Respondent-Bank strongly resisted the claim made by the petitioner. While he is unable to dispute that under similar circumstances, the Division Bench of Bombay High Court in the case of STATE BANK OF INDIA (supra) has taken the view that the persons who have secured Post-graduation degree without obtaining the

Bachelor's degree are also entitled for two additional graduation increments in terms of the Fifth Bipartite Settlement, pointed out that since the two additional graduation increments are provided in terms of the Fifth Bipartite Settlement, the parties get a right only in terms of the Settlement; and when the Settlement states that only such of those employees who are graduates are entitled for the benefit of additional increments, the petitioner who has not become a graduate and who has become a post-graduate without becoming a graduate is not entitled for the extension of the benefit of the settlement for grant of two additional graduation increments. It is his submission that it is not permissible for this Court to expand the terms of fifth Bipartite settlement entered into between the Management and the Employees" of the Banks as the terms of the Settlement incorporates the terms of contract entered into between the parties. He further submitted that so far as the claim of the petitioner is concerned, the same is liable to be rejected on the ground of delay and laches on his part in approaching this Court. According to the learned Counsel, the petitioner, having kept quiet for a period more than ten years when his claim for sanction of two additional graduation increments came to be rejected by means of communication Annexure-D dated 4th June 1990, he should not be permitted to invoke the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India and this petition should be dismissed solely on the ground of delay and laches on the part of petitioner in approaching this Court. It is his further submission that even if this Court is to take the view that the petitioner is entitled for two additional graduation increments, it must be made only as prospective and only from the date of presentation of this petition.

5. In the light of the rival contentions advanced by the learned Counsel for the Parties, the two questions that would emerge for my consideration in this petition are:

1. Whether the petitioner is entitled for two additional graduation increments as claimed by him when admittedly he has not obtained Bachelor's Degree; and has only secured Post-graduation degree without obtaining Bachelor's degree?
2. Whether the relief sought for by the petitioner for grant of two additional graduation increments is required to be rejected on the ground of delay and laches on the part of the petitioner in approaching this Court?

Regarding Question 1:

6. The Sastry Award, which was implemented in the year 1954, provides that the employees of the Bank who obtain degree in graduation are entitled for two additional graduation increments. It is useful to extract paragraph 121(1) of the Sastry Award, which reads as hereunder:

"121(1) Graduate employees will get an additional two increments at the start if they are already graduates, or later, on graduation while in service,"

7. Thereafter, by means of Fifth Bipartite Settlement dated 29th June 1990

entered into between the Employees; and the Management of the Bank, it was agreed that the graduate employees" are entitled for two additional graduation increments. It is useful to refer to extract the statement made in paragraph 4 of the statement of objections wherein the Fifth Bipartite Settlement dated 10th April 1989 is referred to, which reads as hereunder:

"4. The Fifth Bipartite Settlement dated 10.4.1989 entered into between the Management of the Banks represented by the Indian Banks Association (IBA) and the workmen represented by the recognised unions u/s 2(p) and Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957 provide for (under paragraph 10) graduation allowance. The said paragraph is reproduced below:

#### 10. Graduation Allowance

On and from the date of this Settlement a newly recruited graduate clerk shall be fixed at the first stage of the clerical scale and pay and shall draw a fixed graduation allowance of Rs. 130/- per month, which shall be a special allowance and shall be in lieu of two advance increments and shall rank for only such benefits as in Clause 8 above.

On and from the date of this settlement, any clerical staff who becomes a graduate or is a graduate at the time of his promotion from subordinate staff shall only draw graduation allowance of Rs. 130/- p.m. in lieu of two advance increments.

Graduation allowance of Rs. 130/- p.m. shall continue to be paid even after the recipient reaches the maximum of the clerical scale of pay.

In the case of existing graduate clerks who have received the benefit of two additional increments, the graduation allowance shall be payable on their reaching their maximum of the clerical scale of pay in the following manner.

Rs. 65/- p.m. 1 year after reaching 20th stage of the scale.

Rs. 130/- p.m. 2 years after reaching the 20th stage of the scale."

8. However, by means of another Settlement dated 29th June 1990, the "Graduation Allowance" in the Fifth Bipartite Settlement dated 10th April, 1989, was modified to be read as "Graduation Increments". It is useful to extract the statement made in paragraph 5 of the statement of objections which reads as follows:

#### "Graduate Increments

On and from 1st July 1990 Clause 10 of the Fifth Bipartite settlement shall stand deleted and employees who were in receipt of graduation allowance in terms of this clause shall be granted two additional increments in lieu of the allowance without affecting their future date of annual increment. Graduate Employees recruited or promoted to clerical cadre or non-graduates who acquire such

qualification on or after 1.7.1990 shall also be granted two additional increments as per the provision existing prior to the Fifth Bipartite Settlement.

Consequently, with effect from 1.7.1990 Note (1) to Schedule 11(A) of the Fifth Bipartite Settlement on Special allowances for clerical staff, shall stand deleted. While the provisions under Note (b) shall remain operative, the serial numbers thereof i.e. (b) shall stand deleted."

9. No doubt, by means of an agreement entered into between the Employees" and the Management of the Bank, the Bank's have agreed to pay Graduation Allowance in lieu of two advance increments to such of those employees who become graduates. Only the nomenclature, which was earlier referred to as "Graduation Allowance" was subsequently changed as "Graduation Increments". Now, the question is as to whether that such of those employees who have not acquired the qualification of a Bachelor's Degree; and who have directly acquired post-graduation degree are entitled for payment of two additional graduation increments? The object of giving graduation allowance or graduation increments, to my mind appears, is given as an incentive to its employees to improve their quality of performance by acquiring higher qualification. The level of academic achievements or standard for acquiring a degree in graduation or a degree in post-graduation is laid down by the Universities. It cannot be disputed that a person who possess a degree in post-graduation would have achieved higher academic qualification or achievement or excellence than a person who has secured a Bachelor's Degree. Under these circumstances, to my mind, it appears that it is fair and reasonable to take the view that such of those employees of the Bank who have acquired post graduation degree are entitled for two additional graduation increments even if they have not secured Bachelor's Degree. The provision made for acquisition of bachelor's degree for grant of two additional graduation increments, in the circumstances, must be understood as the minimum qualification prescribed for grant of two additional graduation increments. By that, the persons who have acquired post-graduation degree cannot be denied of the benefit of two additional graduation increments only on the ground that they have not secured Bachelor's degree while acquiring Post-graduation degree. This view of mine, is also supported by the view taken by the Division Bench of the Bombay High Court in the case of STATE BANK OF INDIA (supra). At paragraphs 7 and 8 of the judgment it is observed as follows:

"7. On a careful consideration of the contentions raised in the affidavit of Sri Pain, we are not inclined to accept the same. In the first instance it would not be proper and correct to say that the petitioner who is M.A. is not a graduate. As per the Concise Oxford Dictionary the meaning of the word "graduate" is a person who has been awarded an undergraduate or first academic degree, a person who has completed a course of study. In Black's Law Dictionary the word "graduate" is interpreted as one who has received a degree, or other evidence of completion from a graded School, High School, Trade or Vocational School, College, University graduate or Professional Schools or the like. The words "Post

Graduate" is interpreted in the Concise Oxford Dictionary as a course of study carried on after taking first degree. These definitions are based on the traditional educational curricula which permit acquiring of Master's Degree only after attaining the Bachelor's Degree. In order to be a "Master" Degree only after attaining the Bachelor's Degree. In order to be a "Master" one has first to be a "Bachelor". But where a University like one of Mysore permits acquiring of a Master's Degree directly without first taking a Bachelor's Degree, then the meaning of "graduate" in the context cannot be stretched to such an extent as to deny the benefit of advanced increment to a post graduate. It is true that in the instant case the petitioner does not hold any Bachelor's Degree, but holds a Master's Degree. He is not a double graduate since he has not obtained B.A. Degree. According to Sri Pain the post graduation degree issued by the Mysore University which is a recognised University, is accepted for various purposes. Master's degree at any rate is higher than graduation. In such eventuality, when a person holding lower degree namely graduation is entitled to advance increment then obviously a person holding post graduate degree would also be eligible for the same.

8. In our opinion, one of the objects in introducing the said scheme appears to be based on the concept that better the educational qualifications, more efficient the service. The interpretation sought to be placed on the term "graduate" is too technical. It lays more emphasis on the letter than the spirit. The benefit cannot be availed of by a person who is under graduate, but there should not be any difficulty in extending the said benefit to a person holding a post-graduate degree. The higher qualification implies acquiring of lower qualification. A person with higher qualification must be deemed to have more proficiency than a person with lower qualification. The emphasis on the conditions of eligibility for the grant of graduation increment/allowance is of minimum requirement of holding a Bachelor's degree. Therefore, if an employee is over qualified, he does not become ineligible for claiming the said benefit."

10. I am in respectful agreement with the view taken by the Bombay High Court in the case of STATE BANK OF INDIA (supra). Further, as it could be seen from the said judgment, the same was rendered in a claim made against the respondent-Bank itself.

Regarding Question 2:

11. Now, the next question is, whether the petitioner should be denied relief on the ground that his claim was rejected by means of Communication - Annexure-D in the year 1990; and he has slept over his rights all these years and approached this Court in the year 2000? In my view, the facts and circumstances of the case does not persuade me to take that view. The petitioner is in the grade of Senior Assistant, i.e. clerical level in the respondent-Bank. He has made a claim as soon as he acquired the Post-graduate degree for extension of the benefit of two additional graduation increments in terms of the Fifth Bipartite Settlement arrived at between the Employees and the Management of the Bank.

No doubt, the same was rejected by means of communication Annexure-D in the year 1990. However, it is the case of the petitioner that subsequent to the receipt of communication Annexure-D, he went on giving representations to the respondent-Bank and as such he did not approach this Court earlier. Even otherwise, if once it is held that the petitioner is entitled for the benefit of the two graduation increments, to my mind, it appears that it will not be appropriate to deny the said benefit to the petitioner on the ground of delay and laches on his part in approaching this Court. It is necessary to point out that the payment of two additional graduation increments is earned by the petitioner by virtue of Fifth Bipartite settlement arrived at between the Management and the Employees of the Banks". An obligation is created on the part of the Management to pay the said two additional graduation increments. The inaction on the part of the petitioner in not approaching this Court immediately on his claim being rejected by the Bank, in my view, should not deprive the petitioner of his legitimate right to secure two additional graduation increments. If the petitioner, instead of approaching this Court immediately on rejection of his claim, had made an attempt to persuade the Bank by giving representation to concede his claim, the said reasonable attitude on the part of the petitioner should not be made as a ground to deny the relief sought for by the petitioner. Ultimately, the question is as to whether any inaction on the part of the petitioner has prejudiced the interest of the Bank or in any manner it has altered its position. In this case, it cannot be said that the inaction of the petitioner has in any manner either altered the position of the bank or prejudiced its interest. On the other hand, the liability of the respondent-Bank to pay two additional graduation increments due to the petitioner stood postponed. Further, the 1st respondent being an instrumentality of the State, it is needless to point out that the same must act in a fair and reasonable manner in all its actions. When one set of employees are held to be entitled for the relief of grant of two additional graduation increments, it will not be fair or reasonable to deny the same to the petitioner on the ground of delay and laches on his part in approaching this Court. Therefore, I am unable to accede to the submission of Sri Ramdas that the relief sought for by the petitioner is liable to be rejected on the ground of delay and laches on the part of the petitioner in approaching this Court. However, I am of the view, it would be in the interest of justice to deny the interest on the two additional graduation increments to be made payable to the petitioner, from the date on which it has accrued till the date of presentation of this petition.

12. In the light of the discussion made above, I make the following.

#### ORDER

1. The Communications Annexure-D dated 4th June 1990 and Annexure-L dated 18th February 2002 are hereby quashed;
2. The 1st respondent-Bank is directed to consider the claim of the petitioner for payment of two additional Graduation Increments with interest only from the date of presentation of this petition in terms of the Sastry Award and Fifth

Bipartite Settlement till the date of payment,

3. The Respondents are given three months" time from the date of receipt of a copy of this Order, to comply with the directions given above.

13. In terms stated above, this petition is allowed and disposed of.