

(2013) 03 MAD CK 0120

In the Madras High Court

Case No : W.P (MD) No. 81 of 2011, W.P. (MD) No's. 14971 of 2010, 14976 of 2010, 14977 of 2010, 14996 of 2010, 617 of 2011, 618 of 2011, 898 of 2011, 901 of 2011, 902 of 2011 and 532 of 2011

Mr. N. Nagarajan

APPELLANT

Vs

The Assistant General Manager (Administration) and The
Branch Manager, State Bank of India,

RESPONDENT

Date of Decision : 21-03-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2013) 03 MAD CK 0120

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : V.R. Venkatsan, for the Appellant; S. Sethuraman, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—Since the issue involved in all these writ petitions are identical and the prayer sought for is similar, these writ petitions were heard together and are disposed of by this common order. The petitioners in all these writ petitions are Ex-Servicemen and they have sought for a direction upon the respondents which is a State Bank of India to give permanent appointment to them in the post of Watchman cum Armed Guard as they have been already selected for the said post by the proceedings of the 1st respondent dated 18.12.2002 and fill up the existing vacancies with the petitioners and the remaining vacancies by regular recruitment.

2. I have heard Mr. V.R. Venkatsan, learned counsel for the petitioners and Mr. S. Sethuraman learned counsel appearing for the respondent bank and perused the materials placed on record.

3. The learned counsel for the petitioners submitted that all the petitioners have been sponsored through the Ex-Servicemen Welfare Board and after undergoing

the process of selection and verification of the records, they were directed to attend interview and subsequently were selected and posted as Armed Guards. It is contended that it is incorrect to state that since the petitioners were appointed temporarily, their eligibility was not verified and the interview cards were sent as such.

4. The learned counsel placed reliance on Clause 39.15.2 of the regulation issued by the respondent bank in respect of the terms and conditions of service of temporary employees and submitted that as contemplated under the said regulation, the petitioners have all completed more than 90 days of temporary service and in certain cases, they have been in employment for several years and they should be given a chance for consideration for permanent appointment even if they are overaged, provided that they are within the age limit at the time of temporary appointment. It is contended by the learned counsel for the petitioner that at the time of appointment, all the petitioners were within the permissible age and therefore the said regulation has to be made applicable to their cases and the petitioners are to be regularised in service. However, the respondent bank issued a circular on 22.06.2010 deciding to recruit Bank Guards for 95 vacancies in Chennai, Coimbatore, Madurai and Trichirappalli and the claims of the petitioners have not been taken into consideration.

5. Further, it is submitted that the petitioners were given assurance at the time of initial appointment that they will be permanently absorbed and only thereafter if there are any vacancies, the respondent bank would approach the Ex-Servicemen Welfare Board to sponsor other candidates. Further, it is submitted that the names of the petitioners have been sponsored by the Ex-Servicemen Welfare Board and the names have been deleted from the seniority list and they will not be entitled to seek for fresh sponsorship. It is further submitted that all the petitioners fulfilled the required age criteria, educational qualification, conduct and character, medical standards, physical standards etc, and they are also continuing to work even as on date and the existing rule clearly states that the candidates should be within the age limit of 50 years at the time of initial appointment. Further, it is submitted that the bank can recruit number of persons, but the candidates like the petitioners shall be given preference and the respondent bank have miserably failed to adhere to their own regulation.

6. Further, it is submitted that the action of the respondent bank is grossly discriminatory as two similarly placed persons who were also appointed along with the petitioners namely, one V. Thangavelu and V. Nagaraj have been appointed permanently in the respondent bank. The petitioner in W.P. No. 14996/2010 has filed an additional affidavit to the said effect on 22.11.2011 pointing out the discrimination. On the above grounds, the learned counsel for the petitioners prayed for issuing appropriate direction to absorb the petitioners as Armed Guards in the respondent bank taking note of their past service.

7. The learned counsel for the respondent bank submitted that the petitioners in all these writ petitions can be classified into three categories namely, persons

who have been wait listed; persons who have been asked to work for a specific period and persons who are residing in nearby area who have been asked to work as temporary guards. It is submitted that in each and every call letters, the period of employment has been clearly specified and it has been clearly stated that the appointment is purely temporary. It is stated that so far as wait listed candidates is concerned, the list had lapsed as early as on 17.06.2004 and wait listed candidates have not been appointed and the petitioners have not questioned the lapsing of such list.

8. It is submitted that the petitioner Kamaiyan(W.P. No. 14971/2010), N. Veluchamy(W.P. No. 149968/2010) and S. Palanichamy(W.P. No. 902/2011) are the wait listed candidates and all other petitioners are not wait listed candidates. It is submitted that so far as the petitioner Nagaraj (W.P. No. 81/2011), his appointment was purely temporary and it was stated that the period of appointment will not exceed 180 days and the said period is already over. In respect of the petitioner Kamaiyan (W.P. No. 14971/2010), he is a wait listed candidate and wait list was drawn as on 05.07.2003 and only two of the senior most persons have been appointed and none of the juniors have been appointed and the wait list has lapsed and the petitioner has not questioned the same. The petitioner P. Ravi (W.P. No. 14976/2010) is a temporary appointee based on his location of residence in Dindigul and he was engaged because he was residing in Dindigul and the Branch Manager on those grounds sought for ratification of his appointment. The petitioner D. Solomon Raja (W.P. No. 14977/2010) was only a temporary appointee and he has nothing to do with the wait listed candidates prepared for Theni area and his name was sent by the Assistant Director of Ex-Servicemen Welfare Board. The petitioner N. Veluchamy (W.P. No. 14996/2010) is also a wait listed candidate like that of the petitioner Kamaiyan(W.P. No. 14971/2010).

9. In respect of the petitioner V. Krishnamoorthy (W.P. No. 617/2011), it is stated that he is not a person whose name is found in the wait list and his claim cannot be treated on par with the persons whose names are in the wait list. Further, it is stated that the regulation 39.15.2 is in respect of those employees who had completed service as on 31.10.1984 and the same cannot be applied to the case of the petitioners. In so far as the petitioner V.A. Raju (W.P. No. 618/2011), it is submitted that he was recruited in a leave vacancy and cannot claim permanent appointment. So far as the petitioner M. Manickavasu (W.P. No. 898/2011) his appointment was only temporary and his name is not found in the alleged wait list. So far as the petitioner R. Sivakumar (W.P. No. 899/2011), he was only a temporary night watchman. The petitioner M. Babu (W.P. No. 900/2011) was appointed temporarily from the list of candidates sent on 01.11.2004. The petitioner R. Nagaraju (W.P. No. 901/2011) is one of the persons whose name was sent by the Welfare Board out of 25 persons and his appointment was purely temporary. The petitioner S. Palanichamy (W.P. No. 902/2011) is a wait listed candidate in respect of Theni region and it is not the case of the petitioner that his juniors have been appointed and he has been left out. So far as R. Nagaraj

(petitioner in W.P. No. 532/2011), it is stated that he is one among the persons who have been selected out of the selection list dated 01.11.2004 which was forwarded by the welfare board and he was a temporary watchman and as such there is no right to seek for regularisation.

10. Further, it is submitted that the Branch Manager has no right to give any recommendation contrary to the rules and regulations to any person and such recommendation is not binding on the bank. So far as the contention that age relaxation has to be granted, it is submitted that it is applicable only to the person who was in service under single branch that too on the notified date namely, 31.10.1984. It is further submitted that in respect of the petitioners whose services were disengaged, they are entitled to once again register with the Ex-Servicemen Welfare Board within 90 days. It is further submitted that except in Madurai region, there is no other litigation pending in any other region in the State of Tamil Nadu and recruitments have been made pursuant to the notification dated 22.06.2010.

11. After hearing the learned counsel for the parties and perusing the materials available on record, the following facts emerge:-

All the petitioners were engaged by the respondent bank either as Armed Guard or Watchman. It is stated that their appointment was purely temporary and no right is conferred by virtue of such temporary appointment. The respondent bank would categorise the petitioners into three categories namely, such of those who were wait listed category, persons who have worked only for a specified period and persons whose services were availed by the concerned Branch Manager on account of their proximity to the branch or their place of residence in the same area/district. So far as the wait listed candidates, the grievance of the petitioners is that in the wait list, names of 11 candidates are found and only two candidates namely V. Thangavelu and V. Nagaraj both hailing from Theni district alone have been given permanent appointment. In the counter affidavit filed by the respondent, the only explanation given is that other persons in the wait list did not reach the zone of consideration and the wait list had lapsed. However, no record has been placed before this court to show that the wait list was prepared for a specified period of time and that it had lapsed on and after the said date, but the fact remains that two persons in the said wait list have been absorbed. Therefore, prima facie, it is clear that the petitioners have been discriminated.

12. As per the general instructions given in respect of the appointments even at the stage of issuance of interview call letters, the petitioners have been informed that their appointment is only temporary in nature and will not confer any right or claim for permanent appointment in the bank and the appointment is also liable for termination on short notice at the discretion of the bank without assigning any specific reasons thereof. The terms of appointment appears to be akin to the appointment of candidates under rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules. Therefore, if the respondent bank has not offered any permanent appointment to any of the similarly placed persons like

that of the petitioners, there could be no quarrel on the issue and the petitioners cannot be stated to have any grievance. But the facts of the case are otherwise, since admittedly two candidates who were wait listed along with the petitioners have been given permanent appointment. Therefore, in respect of those two candidates, the bank either should have taken the temporary service as qualifying service and considered them and appointed them or by considering the temporary service they should have been directed to participate in the recruitment process and recruited along with fresh hands. The fresh recruitment notification was admittedly issued only on 22.06.2010. It appears that those two candidates namely, V. Thangavelu and V. Nagaraj were appointed much earlier as permanent staff. Therefore, their appointments appear to have been done solely based upon their past temporary service. If that be the case, not extending such benefit to the petitioners is arbitrary and it against Article 14 and 16 of the Constitution of India.

13. The respondent bank would contend that the temporary appointment does not confer any right and the services of the Ex-Servicemen are availed on need basis, considering the locational advantage, their place of residence etc. It is rather surprising that the Armed Guard who is entrusted with the safety of the branch of the respondent bank is recruited without verification of any of his antecedents and they are engaged at the whims and fancies of the concerned Branch Manager. In fact, such stand taken by the respondent appears to be an incorrect statement, since the interview call letter issued to the petitioner Kamaiyan has been filed in the typed set of papers. The interview call letter clearly states as to what are the documents the petitioner has to produce. The petitioner thereafter has to undergo physical fitness test, medical fitness test and such other matters. Hence, the respondent bank has not placed the entire details as regards the manner of engagement of these Ex-Servicemen and appear to give a colour as if they are engaged for short spells and on purely temporary basis.

14. After having gone through the entire materials placed on record, this court is convinced to hold that all the petitioners have undergone the process of recruitment in which not only their credentials were verified but their physical endurance as well as physical fitness and medical fitness were assessed. Admittedly, the vacancies in which the petitioners were accommodated were permanent vacancies. Due to a decision taken by the respondents, there was no recruitment for permanently filling up the vacancies until the circular dated 22.06.2010. In the interregnum (i.e.) from 2003 onwards, the services of the petitioners have been engaged. Therefore, in such circumstances, when there are already temporary hands working in the permanent vacancies, the respondent bank being a Nationalised Bank, a model employer, could have very well opted to consider the cases of the petitioners also while effecting recruitment to fill up the posts on permanent basis. The only impediment would be the age criteria. In all other respects, the respondents cannot reject the candidature of the petitioners since there was an assessment of their eligibility

and suitability prior to their temporary engagement. Only in such of those cases where during the course of temporary engagement they have come to certain adverse notice or suffered any punishment, those cases have to be excluded. In all other cases, it would have been the most reasonable approach which would also satisfy the test of Article 14 and 16 of the Constitution is to consider the cases of the petitioners for regular appointment along with the candidates whose names are called for from the Ex-Servicemen Welfare Board. But however, for reasons best known, the respondents have not considered the case of the petitioners.

15. The petitioners had placed reliance on the regulation of the respondent bank which pertains to the terms and conditions of the temporary employees. In accordance with Clause 39.15.2(i)(b), all temporary employees who have put in an aggregate of 90 days temporary service or more at a single branch/office as on 31st October 1984, have been given a chance for consideration for permanent appointment even if they are overaged on the date of issuance of regulation, provided, they were within the age limit at the time of initial temporary appointment. Such of those 90 days category candidates, who have been interviewed and who have been found unsuitable for absorption should not be considered again for temporary appointment in the Bank. All further temporary appointments should be made only out of the candidates sponsored by the Employment Exchanges.

16. The learned counsel for the respondent bank submitted that the said regulation has no application to the facts of the case as this was issued during 1984 and it cannot be applied to the case of the petitioners. This contention is stated to be rejected for the simple reason that the regulation fixes cut off date which was relevant at that point of time, but the policy behind the regulation is what which has to be looked into. The respondent bank took a conscious decision to consider such of those temporary hands who have completed aggregate of 90 days of temporary service for permanent appointment. Therefore, though this regulation came to be issued in 1984, the regulation gives a pointer as to how the temporary employees were dealt with by the respondent bank. It is true that in the same regulation, it is stated that all future temporary appointments should be made through employment exchange. The petitioners satisfy the said condition as their names were sponsored by the Ex-Servicemen Welfare Board, who is competent to sponsor the names of Ex-Serviceman for civilian employment. In such circumstances, there is no legal impediment shown to this court to refuse to consider the cases of the petitioners for regular absorption.

17. It is true that this court cannot issue any positive direction to absorb the petitioners in service, yet considering the fact that all the petitioners are Ex-Servicemen who have spent the best part of their lives in serving the country should deserve a better treatment. Hence, for all the above reasons, these writ petitions are disposed of by directing the respondents to consider the case of the petitioners for permanent appointment without reference to their age subject to

the petitioners fulfilling all other conditions as and when fresh notification is issued for filling up vacancies in the post of Armed Guard, Security Guard and Watchman etc. It is stated by the learned counsel for the petitioners that several of the writ petitioners are still continuing in service. This submission is denied by the learned counsel for the respondent bank by submitting that their temporary services have been disengaged. In view of the disputed question, this court observes that in the event any of the petitioners are still being engaged on temporary basis, such engagements shall be continued till those persons are considered for permanent absorption in the manner as indicated above. Connected miscellaneous petitions are closed. No costs.