
(1972) 01 KL CK 0005
In the High Court Of Kerala

P.J. Thomas and Another

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-01-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (1972) 2 LLJ 312

Hon'ble Judges : P. Subramonian Poti, J

Bench : Single Bench

Judgement

P. Subramonian Poti, J.—The petitioners are at present employees of the State Bank of Travancore. The first petitioner was an officer in the Kottayam Orient Bank Ltd. holding the post of agent from 1-3-1955 to 16-6-1961. The second petitioner was in the service of the Kottayam Bank Ltd., which later became the Kottayam Orient Bank Ltd. and was holding the post of agent of the said bank from 1-2-1947 to 30 5-1960. He was thereafter transferred to the central office of the bank and was working as an officer until 17-6-1961.

2. The Kottayam Orient Bank Ltd. was amalgamated under the Scheme of Amalgamation, dated 16-5-1961, with the State Bank of Travancore. This amalgamation was pursuant to the scheme prepared by the Reserve Bank of India u/s 45(4)(d)(ii) of the Banking Companies Act, 1949, published by the Central Government by notification, dated 16-5-1961. Consequent upon such amalgamation the petitioners were absorbed into the service of the State Bank of Travancore with effect from 16-5-1961. A copy of the Scheme of Amalgamation has been produced in the case marked as Ext. PI.

3. According to the first petitioner he was qualified to hold higher posts in the Kottayam Orient Bank Ltd. where he was working at the time of amalgamation. He was a graduate of the Madras University. The second petitioner though not a graduate is said to have had considerable experience in banking in various capacities.

4. Under the powers conferred by Section 45(4) of the Banking Companies Act, 1949 (hereinafter called the Act), the Reserve Bank may prepare a scheme if it is satisfied of certain matters in regard to any banking company. The scheme may, among other things, make provision for the continuance of the service 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. The proviso to Section 45, Clause (5)(i) reads as follows:

Provided that the scheme shall contain a provision that-

(i) the banking company shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by Central Government, to this said employees the same remuneration and the same terms 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 (whose determination in this respect shall be final);

(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 applicable to the other employees of corresponding rank or status of the transferee bank subject to the qualifications and experience of 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 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 to the Reserve Bank whose decision thereon shall be final.

It is evident from proviso (ii) that 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 applicable to the other employees of corresponding rank or status of the transferee bank. This is, of course, subject to the condition that the qualifications and experience of the said employees are the same as or equivalent to those of the other employees of the transferee bank. In accordance with the Section Ext. P 1 scheme prepared by the Reserve Bank of India made provision that the employees of the transferor bank which in the present case is the Kottayam Orient Bank Ltd. would be taken by the State Bank of Travancore on the same terms and conditions as to remuneration as are applicable to the employees of the State Bank of Travancore. The complaint of the petitioners in the original

petition is that while the petitioners were working as officers at the time of the amalgamation and functioning as agents in regard to branches of the Kottayam Orient Bank Ltd. they were not given the rank and status of agents in the State Bank of Travancore. On the other hand, they were treated as clerks though the salary and remuneration which were being received by them earlier as agents of Kottayam Orient Bank were being paid and that was secured to them. I may mention here that in the counter-affidavit filed by the second respondent, the State Bank of Travancore, it is mentioned that a committee was appointed to consider the qualifications and experience of the employees of the transferor bank, that this committee, after assessing the qualification and experience of the employees found that the second petitioner was eligible to be interviewed for the post of an officer in the State Bank of Travancore, that the first petitioner was not found to be so eligible and that the second petitioner was actually called for interview, but in the interview he did not obtain the minimum marks which would entitle him to absorption as an officer of the State Bank of Travancore. The complaint of the petitioners is that irrespective of considerations of merit to be assessed by the State Bank of Travancore, the petitioners were entitled to be taken into the State Bank of Travancore in the corresponding rank namely that of officers. This having not been done, the complaint is that, the guarantees in the provisions of Banking Companies Act, 1949 and that contained in Ext. P1 Scheme of Amalgamation have been infringed.

5. It is necessary here to mention certain facts relating to certain proceedings before the Courts at the instance of another employee of the Kottayam Orient Bank Ltd. One Mr. Elias, who was a civil agent in the Kottayam Orient Bank Ltd. was, consequent on the amalgamation, appointed as a member of the subordinate staff having been placed in the subordinate cadre. According to him he was entitled to be placed in the clerical cadre on the amalgamation of the Kottayam Orient Bank Ltd. with the State Bank of Travancore and that not having been done, the guarantee was violated. The subordinate staff consisted of categories such as peons, watchmen, sweepers and employees with similar duties. His complaint was that the work of a civil agent could not have any similarity to the work of the peons or watchman or the like, that his work was of a clerical nature and for that reason he should have been considered as belonging to clerical cadre. He filed a petition before This Court under Article 226 of the Constitution in the year 1963, soon after the scheme of amalgamation came into force. He did not succeed before the single Judge and the matter was taken up in appeal. The appeal was allowed and his claim to be absorbed in the clerical cadre was upheld by This Court. The matter was taken up to the Supreme Court by the State Bank of Travancore. In the decision in *State Bank of Travancore Vs. Elias Elias and Others*, , the view taken by the Division Bench of This Court was upheld with the result that Mr. Elias succeeded in his claim to be recognised as in the clerical cadre. This decision of the Supreme Court was rendered on 4-9-1970. The petitioner's case is that they were aware of these proceedings at the instance of Mr. Elias, that they waited for the final outcome of

the proceedings commenced by Elias and when they found that the Supreme Court upheld his claim they moved the second respondent, the State Bank of Travancore, by two petitions, Exts. P2 and P3 respectively. These petitions were of the dates 11-11-1970 and 18-11-1970. It is not disputed that these petitions have not been disposed of. The prayer in the original petition is for the issue of a writ of mandamus directing the second respondent to dispose of these petitions filed by the petitioners. There is another prayer and that is for an order to "fit" the petitioners in the rank and status legally due to them in the State Bank of Travancore as officers in the appropriate cadre entitled to the emoluments from 1-7-1963. In effect it is the recognition of the claim of the petitioners that they ought to have been treated as officers from 1-6-1963, that is the relief sought in the original petition.

6. The main answer to the prayers contained in the original petition in the counter-affidavit of the second respondent is that the petitioners are not entitled to invoke the jurisdiction of This Court as they have resorted to This Court long after the matter had been settled so far as they were concerned. It is further pointed out in the counter-affidavit that the entire question was considered as closed by the second respondent especially when, evidently, the petitioners did not pursue the matter after they were told that their stand could not be accepted as early as in 1963. It is further contended that when, later, the union representing the employees took up the matter and settlement was reached between the union and the management it was considered that there was no occasion for any further proceeding and the chapter was closed. On the merits, it is contended that Section 45(5)(i) of the Act, as well as the Scheme of Amalgamation, framed in accordance with that provision contemplated absorption of the employees of the transferor bank to posts of corresponding officers in rank and status only if the qualifications and experience of the employees of the transferor bank were the same as that of the transferee bank. It is the case of the second respondent that so far as the petitioners and others who were employed by the transferor Bank were concerned their experience in banking was not of the same degree as the experience of the corresponding officers of the transferee bank and, therefore, there can be no question of treating them as of the same rank without assessing their qualifications and experience. To that end a committee is said to have been appointed and duly taking note of the report of the Committee, Ext. R2, the the question of applying the scheme of amalgamation was said to have been decided upon.

7. The contentions raised in the original petition call for decision on two points. The main question is whether the officers of the Kottayam Orient Bank Ltd. were entitled to claim that they should be absorbed into the transferee bank as officers irrespective of an independent assessment of their qualifications or merit. The second is a preliminary objection raised by the second respondent and that objection is that it is not proper at this distance of time to entertain the prayers in the original petition in view of the fact that considerable unsettlement would be caused if that is done.

8. I have already referred to Section 45(5) of the Act. That provides that the scheme shall contain a provision with regard to the conditions of service as are applicable to employees of corresponding rank or status of the transferee bank. The petitioners were no doubt officers of the transferor bank and the corresponding class of employees of the transferee bank are the officers of that bank with whom the petitioners have not been equated. As a justification for this, reliance is placed on the condition-

...subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee bank.

The attempt, in justification of the procedure adopted by the second respondent, is to show that the qualifications and experience of the petitioners and other employees had first to be ascertained in order to see whether they were the same as that of the employees of the corresponding rank and status of the State Bank of Travancore and this would be possible only by what has been done in the present case, namely that of appointing a committee to adjudge the qualifications and experience. It is said that those whose qualifications and experience were found to be the same as that of the officers of the corresponding rank in the transferee bank were absorbed in the same rank.

9. In the decision of the Supreme Court in *State Bank of Travancore Vs. Elias Elias and Others*, to which I have already referred, the Supreme Court said thus:

It would be a gross denial of the guarantee if the employee is not given the rank and status which he had in the transferor bank. It is in our judgment, not open to the transferee bank to "fit" an employee of the transferor bank performing the duties of a clerk into a subordinate cadre manned by employees performing duties which are not clerical, but of peons, watchmen, sweepers and the like.

The Supreme Court further said thus:

But in "fitting" an employee into the transferee bank, the rank and status enjoyed by an employee in the transferor bank cannot be ignored. A person performing certain duties in the transferor bank when admitted into the service of the transferee bank may be so "fitted" in a cadre which is equivalent in status and rank with the status and rank of the employees in the transferee bank, but in grading him into the cadre of equivalent status and rank, experience and qualifications must be taken into account. On the ground of lack of experience and qualifications a person cannot be deprived of his rank and status in the transferee bank. Clause (ii) to the first proviso of Section 45(5)(i) does not, in our judgment, authorise the transferee bank to "fit" an employee in the transferee bank into a post with rank and status lower than the rank and status enjoyed by the employee in the transferor bank.

Based on these observations Sri T.N. Subramonia Iyer, counsel for the petitioners, contends that the question of qualifications and experience is immaterial and irrelevant in the matter of fitting the employees of the transferor

bank into the corresponding posts in the transferee bank. Qualifications and experience may be considered not for that purpose but possibly to consider their rank in the corresponding post to which they are fitted in. No doubt, on the language employed in the judgment by the learned judges of the Supreme Court there is much to say in favour of the view canvassed by counsel for the petitioners. But before I go into that question, I must necessarily consider the preliminary objection raised in the case. That calls for a narration of few more facts.

10. The scheme of amalgamation, Ext. P1, was framed in 1961. The petitioners' complaint, if any, must have arisen in July, 1963, when they were fitted in not as agents of the transferee bank. Ever since that time they had been working in that post and drawing salary with periodical increments and other benefits. Apart from the Kottayam Orient Bank Ltd., two other banks also were amalgamated with the State Bank of Travancore and they were the Travancore Forward Bank Ltd. and the Bank of New India Ltd. Later two more banks, The Cochin Nair Bank and the Latin Christian Bank were also amalgamated with the State Bank of Travancore in 1964. Disputes and claims appear to have been raised by the employees of the five amalgamated banks in regard to their absorption in the State Bank of Travancore. It is averred in the counter-affidavit of the second respondent that the State Bank of Travancore Employees' Union representing the employees of the second respondent bank also made various representations and demands on behalf of the employees who were absorbed in the service of the second respondent. There appears to have followed negotiations as a result of which a settlement was finally reached for and on behalf of the employees of the respondent bank and the bank itself. Ext. R1 is the copy of the settlement. Though petitioners contend that they are not bound by the settlement, the second respondent relies on that for the purpose of showing that so far as the bank was concerned it had considered that disputes had been settled as early as in 1968 by Ext. R1. It is further averred that several officers of the transferor bank placed in the same position as the petitioners approached This Court in 1963, to seek redress on the very same complaint as seen made in this original petition. Reference is made to O.P. 2388 of 1963, and the writ appeal there from W.A. 213 of 1965, O.P. 1790 of 1963, O.P. 76 of 1964, O.P. 307 of 1964 and O.P. 1635 of 1963. In all these cases the same complaint as to the error in treating the employees of the transferor bank otherwise than as officers is seen made and This Court by the judgments delivered in these cases rejected these claims. The petitions were disposed of during the period ranging from 1963 to 1965. This Court pronounced against the stand that was taken by the petitioners in O.P. 2388 of 1963 on the merits. It is said that if the petitioners wanted to still contend that they were entitled to be considered as officers in the transferee bank it was up to them to have moved the Court then for appropriate relief. It is further pointed out that the case of Elias is different. In paragraph 6 of the counter-affidavit mention is made of certain facts possibly intended to show that the second respondent was led to believe that there was no matter pending with

regard to the petitioners" claim which would unsettle the state of affairs later. Reference is made to the reorganisation and the fixation of the entire staff pattern after 1963 and consequent appointment and promotions of suitable candidates to various posts of officers. It is mentioned that since July 1963, as many as 440 persons were appointed and promoted as officers in the respondent bank and they were working as officers in the service of the bank. It is further said that any relief granted to the petitioners would be adverse to the interests of those persons. There are about 100 employees like the two petitioners in the amalgamated banks and according to the second respondent any relief at this distance of time to these persons would result in the entire arrangement being upset. This, according to them, should not be the case as the petitioners have disintitled themselves to any reliefs by their inaction for more than seven years after they were posted as clerks.

11. In the original petition it is mentioned that the representations of the petitioners are pending and, therefore, there is no question of any laches on their part. Possibly it was the decision of the Supreme Court in the case of Elias that prompted them to send those representations. But if there was no justification for them to wait till the decision in that case to seek redress, then the mere fact that representations have been made thereafter and those have not been disposed of would be no reason to permit the petitioners to invoke jurisdiction under Article 226 of the Constitution of India. It is said that earlier both the petitioners had sent representations and reference is made to Exts. P6 and P7 said to have been so sent by the petitioners. But on a perusal of Ext. P 6, it is seen that it is not a representation at all. It is nothing more than a note of protest, dated 18-10-1963, made at the time the petitioner was posted as a clerk. It is not as if the petitioner sought any relief in Ext. P 6. On the other hand he was quite aware that the right which he claimed had been infringed and he was intimating his intention to pursue remedies otherwise than by way of a representation. It is stated in Ext. P 6 thus:

I have to inform you that I do not accept the position now given to me as clerk and hence the pay and other allowances will be received by me without prejudice to my right to an officer's status that may be established in appropriate proceedings.

Evidently this did not call for any orders by the second respondent. This is not the case with Ext. P 7. That was a representation, dated 30-10-1963, made by the first petitioner to the second respondent pointing out that he ought to have been fitted into the transferee bank as an officer. Though the averments in the original petition would suggest that no disposal was given to the petition, in the affidavit in rejoinder filed by the second respondent, it is mentioned that the disposal of this representation was communicated to the first petitioner. It is stated in the affidavit in rejoinder that the second petitioner was intimated about the disposal of his representation by Ext. R6 and that a similar intimation was given to all persons who had submitted similar representations. It is further

mentioned that the duplicate copy of the reply given to the first petitioner could not be traced from the files. If, as a matter of fact, the petitioners had been told their representations could not be considered favourably, the mere fact that some others had filed original petitions before This Court or that the matter was taken to the Supreme Court may not be sufficient ground to entitle them to contend that they are not guilty of any laches. There is the further fact that a series of petitions were filed by the officers of the transferor bank situated just as the petitioners were and these petitions were disposed of by This Court between the period 1963 to 1965, holding that the petitioners were not entitled to the reliefs. Reference is made to these petitions in the counter-affidavit of the second respondent. Normally when these orders became final the petitioners would have remained quiet only if they also accepted the result of the petitions filed by the other officers. The mere fact that a civil agent had filed another petition and that was allowed by the Division Bench in appeal somewhere in 1967, is certainly not a sufficient answer for the petitioners to remain silent for all these years. At any rate, that does not explain the delay. Further the case of Sri Elias was apparently different from that of the petitioners. No doubt, the petitioners now seek to take advantage of the dictum in the decision of the Supreme Court in the case I have adverted to earlier.

12. During all the years after the controversy had arisen there have been appointments to a number of posts of officers in the State Bank of Travancore. On the same reasoning as that now urged by the petitioners, all the officers of the transferor banks amalgamated with the State Bank of Travancore could very well contend that their claims also should be recognised. If that is to be accepted, that would mean that the appointments and promotions made during all these years would necessarily require a review or reconsideration. Of course, that is inevitable if the petitioners have been diligent enough and have been pursuing the remedies available to them under law. But if they are guilty of laches, they are not entitled to disturb the present position by seeking reopening of action that had been taken by the second respondent under the belief that so far as the petitioners and others similarly placed were concerned the matter had become final. I may in this connection refer to the decision of the Supreme Court in *Rabindranath Bose and Others Vs. The Union of India (UOI) and Others*, . Even though the petitioners there who had moved a petition under Article 32 of the Constitution urged that their fundamental right had been infringed by the seniority recognised in some of the respondents to the petition, the Supreme Court declined to interfere on the ground that they, without any reasonable explanation, had approached the Court after inordinate delay. The Supreme Court said thus:

The highest Court in this land has been given Original Jurisdiction to entertain petitions under Article 32 of the Constitution. It could not have been the intention that This Court would go into stale demands after a lapse of years. It is said that Article 32 itself is a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution-makers that This Court

should discard all principles and grant relief in petitions filed after inordinate delay.

The Supreme Court also observed thus:

But there is a limit to the time which can be considered reasonable for making representations. If the Government has turned down one representation, the making of another representation on similar lines would not enable the petitioners to explain the delay.

13. My attention has been drawn by learned Counsel for the petitioners to the decision in *State of Kerala v. Manager, C.M. of Schools* 1970 KLT 106. In that case it was contended that certain rules under the Kerala Education Rules, 1958, brought into force on 1st July, 1961, ought not to be permitted to be challenged successfully since they have not been challenged up to the institution of the writ petition in 1967. Dealing with this contention, This Court referred to the decision of the Supreme Court in *re the Kerala Education Bill* 1957 AIR 1958 S.C. 1956, and quoted the observation in that decision that--"there cannot be any loss of fundamental rights, merely on the ground of non-exercise of it." The decision in *Campbell College Belfast (Governors) v. Commissioner of Valuation for Northern Ireland* (1964 1 W.L.R. 912, in which the House of Lords struck down a levy of a tax which had been paid by a school for 132 years though it was of a category exempted from taxation under the Act, was also adverted to. These, according to me, have no application to the case before me, where there is a continuing infringement of a right by the continued operation of a rule. Such a rule is open to challenge so long as it continues to operate. That of course must necessarily be distinguished from a case where a party is aggrieved by the wrongful conduct of an authority and gets a cause of action, but no redress is sought for years together. The inordinate delay is not satisfactorily explained. I see no justification to accept the plea that the petitioners were entitled to wait till the disposal by the highest Court of the land of a petition by a civil agent of the Kottayam Orient Bank Ltd. especially when petitions by persons similarly situated as petitioners had successively failed. The petition has, therefore, to be dismissed on the ground that This Court does not see its way at this distance of time to interfere with action treating the petitioners as clerks. The discretionary jurisdiction does not call for application on the facts of this case. The original petition is dismissed. But in the circumstances of the case, parties are directed to suffer costs.