
(1995) 01 MAD CK 0014
In the Madras High Court
Case No : Writ Petition No. 9816 of 1994

R. Sundaram

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 19-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 1 LLJ 459

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : R. Vaigai, for Row and Redy and S. Ayyathurai, for the Appellant;

Final Decision : Dismissed

Judgement

Srinivasan, J.—The case of the petitioner is that he was in temporary service of the State Bank of India in the first instance at Lalgudi and

thereafter at Madurai branch as a temporary watchman. According to him, he was in service from May 6, 1968 to August 9, 1972 under orders

passed periodically and his services were terminated arbitrarily and illegally without any reason. It is his claim that he was in continuous service

within the definition of Section 25-B(i) of the Industrial Disputes Act (herein after referred to as "The Act") from October 23, 1967 or at any rate

from May 6, 1968 till August 10, 1972. It is also contended that he had worked for more than 240 days in the year preceding his termination and

notice ought to have been issued to him u/s 25-F of the Act. Relying upon the judgment of the Supreme Court in The State Bank of India Vs. Shri

N. Sundara Money, the petitioner has come forward: with the Writ Petition for issue of mandamus directing the respondent Bank to reinstate him

in service as Clerk, Watchman or in any equivalent in the category of sub-staff in

any of their branches with continuity of service. The petition was actually filed on October 8, 1984. In the affidavit it is also stated that the action of the respondent is violative of the principles of natural justice, Articles 14 and 16 of the Constitution of India and Sections 25-G and 25-H of the Act. It is averred that pursuant of the judgment of the Supreme Court in Sundara Money's case (supra) the respondent has taken a policy decision to recall all persons whose services were terminated like that of the petitioner, but had not given any publicity either in the Press or otherwise and kept it as a secret with the result the concerned Branch Managers only intimated their favourites and reappointed them and absorbed them in permanent vacancies. Names of eighteen persons are mentioned in the affidavit and it is alleged that they were voluntarily called back by the concerned Branch Managers and absorbed as permanent employees. According to petitioner, there were such appointments even in June 1983. A reference is also made to a proceeding in I.D. No. 11 of 1977 and the absorption of certain persons in permanent vacancies in pursuance of the Award passed therein. It is stated by the petitioner that he was not aware of the said policy decision of the Bank till December 1983 and on coming to know of the same, he immediately caused a layer's notice dated December 31, 1983. He had not received any reply. It is further stated that he was without a regular job since August 1972 and many of his juniors had been absorbed in permanent vacancies by the Bank. With those averments he has prayed for issue of Mandamus as stated above.

2. The Bank filed a counter affidavit setting out the following case: The Bank had a fixed pre-determined complement of regular staff for all the establishments including the branches. As per the sanctioned strength of staff, appointments were offered to the candidates selected on the basis of test and interview. Every Branch/administrative Office maintained a panel of temporary employees and persons sponsored by the employment Exchange alone were included in the Panel. Whenever any sub-staff goes on leave or a need arises for engagement of temporary sub-staff for any particular period, the Branch appoints one from the panel of temporary employees and he will be asked to work for the specified period. Such engagement is restricted only to the period of the vacancy and he is paid only for

the days for which he was engaged. Codified Staff Circular No.

44 as on December 31, 1972 dealt with appointment of temporary employees and the absorption in regular service. According to the circular,

whenever a vacancy in Sub-Ordinate cadre arises in a Branch the first priority in the matter of appointment should be given to the person who had

served the branch in a temporary capacity for a period of at least three months, provided there were no temporary employees with a service of

more than nine months (as on August 31, 1966) remaining to be absorbed in the bank service. Further, when a vacancy arises in the subordinate

cadre in a branch, the Branch Manager will advise the Personnel Department or the Regional Office whether there is any subordinate employee

who had put in temporary service of three months or more and if so, an application in the standard form should be obtained from such employee

and forwarded to them. The temporary employees were considered only for vacancies arising in the branch in which he was working as temporary

employee. When a vacancy arises in the subordinate cadre at the branch, the temporary employee should approach the Branch Manager who will

collect an application from him and forward it to the Regional Office for Permanent employment. After the disposal of Sundara Money's case

(supra) by the Supreme Court holding that even the cessation of employment of temporary employee on the expiry of the fixed period of

temporary employment would amount to retrenchment requiring compliance with the provisions of Section 25-F of the Act, there were spate of

claims from temporary employees claiming relief of reinstatement and absorption in service. On July 14, 1976, the Central Office of the Bank

issued a directive with regard to engagement of temporary employees and their absorption in service to the effect that such of those employees

who were then in service and who had completed one year of service will be taken for the time being in temporary service, that employees whose

services were terminated on or after January 1, 1975 should be reinstated in temporary capacity on their making an application for reinstatement

and they should be reinstated without any backwages and that in the case of employees who were not engaged after January 1, 1975, their claims

should be decided on merits and if necessary should be contested on the ground of staleness of claims etc., The All India State Bank of India Staff

Federation raised an industrial dispute (1) making a claim for backwages in respect of temporary employees who were reinstated in service

pursuant to the decision in Sundara Money's case (supra), and (2) non-employment of 768 temporary employees who had not completed 240

days of attendance in a period of twelve months immediately preceding their termination. The dispute was referred to the Central Government

Industrial Tribunal, Madras, for adjudication. That was numbered as I.D. 11 of 1977. On October 4, 1978 a settlement was arrived at between

the Bank and the Staff Union, Madras Circle. On the basis of the settlement, an award was made. As regards the second issue, it was provided

that the list of 301 persons submitted by the Union as not having been offered employment yet from out of 768 persons referred to in the said issue

will be gone into by the parties and such of them as are agreed to have been covered by the number of 768 shall be offered employment by the

Bank. The Union represented that the list of 768 included temporary employees in the subordinate cadre. The Bank agreed to consider them for

employment provided they were in the list of 768. The respondent is not in a position to say whether a vacancy arose in Madurai Branch after

August 9, 1972 and whether the petitioner was entitled to be considered for permanent employment in terms of Staff Circular No. 44 and whether

he approached the Madurai branch Manager to forward his application for permanent employment. There is no record to show that the petitioner

staked his claim for absorption and the same was negatived. The first occasion on which the petitioner made a claim was by his lawyer's notice on

December 31, 1983. His claim has become stale and has to be rejected on the ground of delay and laches. The petitioner's name did not figure in

the list of 301 employees submitted by the Union for absorption. It is not open to the petitioner to challenge the validity of the termination of his

employment on August 9, 1972. He ought to have pursued his remedies under the Act and he cannot approach this Court to exercise its

discretionary jurisdiction under Article 226 of the Constitution of India. In view of the lapse of time, the Bank is not in a position to ascertain

whether the petitioner had put in continuous service of 240 days as claimed by him. In any event the Bank does not admit that the termination of

the petitioner's employment was in violation of Section 25-F of the Act. As there was no claim or representation on behalf of the petitioner at any

time, there was no scope of considering him for absorption in permanent vacancy. Out of the 18 persons mentioned in the affidavit of the petitioner, 12 were employees in Clerical cadre and they were offered permanent employment on the basis of test and interview. Three persons made claims for absorption in service in terms of relevant Circulars and on being satisfied with their claims, they were appointed in permanent vacancies. Two other persons appointed as Godown Watchmen in Salem Branch with effect from January 2, 1978 and the third was appointed as a Messenger in Adyar Branch. All the said employees did make a claim or representation either directly or through the Union and they were duly considered. As the petitioner remained inactive, he cannot be heard to claim that he should be absorbed in permanent employment. The petitioner's failure to claim for employment for more than ten years is due to his having obtained employment elsewhere or because he was not interested in Bank job. In view of the advanced age of the petitioner, there is no scope to offer him permanent employment.

3. An additional affidavit has been filed on January 6, 1995 by the Bank referring to certain development which had taken place subsequent to the filing of the Writ Petition. According to that affidavit, the SBI Staff Federation espoused the cause of the temporary employees of the subordinate cadre and the Bank agreed to consider the same on certain terms and conditions resulting in settlement dated November 7, 1987 under. Section 18(1) of the Act. The said settlement was amended by another settlement dated July 16, 1988. In terms of the settlements, all the temporary employees are to be considered for permanent employment by an interview, provided they satisfied certain terms and conditions. This exercise was completed and a panel consisting of 3178 candidates was drawn to cater to the future vacancies arising in the Bank. As on date 660 candidates were absorbed permanently in the Bank from the panel. All the future vacancies which are to arise are to be filled only from this panel consisting of wait listed candidates upto March 31, 1995.

4. Learned Counsel for the petitioner has submitted that the provisions of Section 25-F, 25-G and 25-H of the Act have not been complied with and the mandatory provision of Rule 78 of the Industrial Disputes (Central) Rules has not been complied with by the Bank. It is submitted by her

that though the petitioner may not be entitled to the grant of the prayer as found in the Writ Petition, the relief has to be moulded by the Court and

the petitioner should be granted appropriate relief. According to her, the termination of employment of the petitioner being illegal, as per the

judgment of the Supreme Court in Sundara Money's case (supra) the Bank ought to have by itself reinstated him in service. In any event, the Bank

ought to have treated him as a retrenched employee and sent an intimation to him under Rule 78 of the Industrial Disputes (Central) Rules of the

vacancies whenever they arose and given him an opportunity to approach the Bank for re-employment. It is contended that the bank being a State

Authority, cannot violate the statutory provisions and the Rules and prolonged delay and laches on the part of the petitioner. It is submitted by her

that the Bank did not publish its policy formulated after Sundara Money's case (supra), and the petitioner was not aware of the re-employment of

other persons or the proceedings in I.D. No. 11 of 1977. Lastly, it is contended that in any event, the Bank having entered into a settlement after

the filing of the Writ Petition, ought to have called the petitioner and interviewed him to be considered for permanent employment.

5. Learned counsel for the respondent has drawn my attention to the provisions of Staff Circular No. 44 and submitted that the conditions

prescribed therein not having been fulfilled by the petitioner, he is not entitled to get any relief in this writ petition. It is urged by him that the

petitioner is not entitled to any relief because of the inordinate delay in approaching this Court and the petitioner should, if at all, have resorted to

his remedies under the Act before the appropriate forum soon after the termination of the puate forum soon after the termination of the services. It

is submitted that no reference has been made to Rule 78 of the Industrial Disputes (central) Rules in the affidavit of the petitioner and in any event,

persons who were employed by the Bank, who, according to the petitioner are his juniors, ought to have been impleaded as parties and their non-

joinder vitiated the writ petition. It is argued that if the so called junior employees had been impleaded, the Bank would have had an opportunity to

displace the person who is wrongly appointed and appoint petitioner in his place. According to learned counsel, the Bank had acted bonafide and

entered into settlements, with the concerned Unions, both in I.D. 11 of 1977 and also in 1987 and 1988 as referred to in the additional affidavit.

6. I am of the opinion that the Writ Petition has to be dismissed on a very short ground. There is absolutely no explanation for the delay of more than twelve years on the part of the petitioner in approaching the Court under Article 226 of the Constitution of India. The decision of the Supreme Court in *Sundara Money's Case* (supra), was widely known throughout the country and it is impossible to believe that the petitioner did not think of making a claim as he was not aware of the policy of the Bank. If he was suffering without a regular employment, he would have certainly initiated appropriate proceedings either under the Act or invoked the extraordinary jurisdiction of this Court. He would have at least approached the Unions and made arrangements for being represented by them. In the typed set of papers filed by the petitioner, copies of two letters, one addressed to the Vice- President, State Bank of India Staff Union, Madras dated January 30, 1973 and another addressed to the General Secretary, State Bank of India Staff Union dated July 3, 1973 are included. If the two letters had been sent to the respective addressees, there is absolutely no reason why the Unions did not include the petitioner's name in their lists in I.D. No. 11 of 1977 or in the subsequent settlement. There is no reference whatever to these letters in the affidavit of the petitioner. No record has been produced before me to show that the letters were actually sent to the respective addressees. The first communication sent by the petitioner making a claim to the Bank was only through his lawyer on December 31, 1983. In that notice also, there is no reference to the aforesaid letters. If really the petitioner has sent such letters to the Staff Union and there was no response thereto, he would have referred to them in his affidavit. There is no explanation in the affidavit excepting the vague statement in paragraph 7 that he was not aware of the policy decision of the Bank till December 1983. If really he came to know of the said policy decision for the first time in December 1983 as alleged by him, he has not chosen to disclose the source of information as to how he came to know of the said policy decision of the Bank in December 1983. It is not also stated in the affidavit as to how he came to know that the 18 persons mentioned in the affidavit were recalled by the Bank and absorbed as permanent employees; nor has he chosen to mention as to when he came to know of the same. In paragraph 13 of the affidavit he has stated that he is without a regular job since August 1972. He adds that he is a

married man with a big family to support. He had not disclosed the jobs that he was doing after 1972. It is not his case that he was without employment. He has carefully used the expression "without a regular job". If it is true as claimed by him that he has a big family to support he would have certainly approached the Bank soon after 1972 or soon after the judgment of the Supreme Court in Sundara Money's case (supra), which was actually delivered on January 16, 1976. A perusal of the affidavit of the petitioner shows that he has not taken the Court into confidence and placed all the facts before the Court. When he is withholding certain facts from the Court, he is not entitled to get a relief under Article 226 of the Constitution of India. The jurisdiction is discretionary and on the facts and circumstances of the case, I am not inclined to exercise that jurisdiction in his favour.

7. Further, there is no explanation for the delay of twelve years in filing the writ petition. The Supreme Court had occasion to consider the effect of such a long delay in Bhoop Singh Vs. Union of India and others, . The petitioner in that case was appointed as a Constable in the Delhi Armed Police in 1964. His services were terminated on August 3, 1967 and according to him it was due to his participation in a mass agitation on April 14, 1967 with several other police constables. Many of the dismissed constables were taken back in service as fresh entrants as a result of a demand by some Member of Parliament. Some others who were not taken into service had filed writ petitions in 1969 and 1970, which were allowed in 1975. Some more Constables filed Writ Petitions in 1978 and they were also allowed. The petitioner therein, however, filed an application before the Central Administrative Tribunal in 1989 praying for reinstatement in service and all consequential benefits on the ground that his case and claim were similar to that of the other Police Constables who had succeeded in the earlier litigations. The Tribunal dismissed the petition as highly belated and that there was no cogent explanation for the inordinate delay. While upholding decision of the Tribunal and dismissing the special Leave Petition, the Court said:- Paras 6 to 8 pages 262-263.

6. No attempt has been made by the petitioner to explain why he chose to be silent for so long, if he too was interested -in being reinstated and had not abandoned his claim, if any. If the petitioner's contention is upheld that

lapse of any length of time is of no consequence in the present case, it would mean that any such police constable can choose to wait even till he attains the age of superannuation and then assail the termination of his service and claim monetary benefits for the entire period on the same ground. In our opinion, this cannot be the true import of Art. 14 of the requirement of the principle of non-discrimination embodied therein, which is the foundation of petitioner's case.

7. It is expected of a Government servant who has a legitimate claim to approach the Court for the relief he seeks within the reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. This is a material fact to be given due weight while considering the argument of discrimination in the present case for deciding whether the petitioner is in the same class as those who challenged their dismissal several years earlier and were consequently granted the relief of reinstatement. In our opinion, the lapse of a much longer unexplained period of several years in the case of the petitioner is a strong reason not to classify him with the other dismissed constables who approached the Court earlier and got reinstatement. It was clear to the petitioner latest in 1978 when the second batch of petitioners were filed that the petitioner also will have to file a petition for getting reinstatement. Even then he chose to wait till 1989, *Lt. Governor of Delhi and others Vs. Const. Dharampal and others*, also being decided in 1987. The argument of discrimination is, therefore, not available to the petitioner.

8. There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to

remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence and we are unable to construe Dharampal's case (supra) in the manner suggested by the petitioner. Art. 14 of the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept. In our opinion, grant of the relief to the petitioner, in the present case, would be inequitable instead of its refusal being discriminatory as asserted by learned counsel for the petitioner. We are further of the view that these circumstances also justify refusal of the relief claimed under Art. 136 of the Constitution.

8. The ratio of the Judgment would apply in this case on all fours. Relying on the said judgment, Jayasimha Babu, J. has dismissed a similar writ petition by another employee against the Bank in W.P.No. 10086 of 1984 by his Judgment dated October 18, 1994, In that case, the employee's services were terminated on February 28, 1971. He filed the writ petition on October 15, 1984 with a similar prayer. The arguments advanced before the learned Judge were almost the same as in the present case. The learned Judge dismissed the Writ Petition on the ground of inordinate delay and laches.

9. Learned counsel for the petitioner contends that the rule in Bhoop Singh 's case (supra) will not apply in as much as there was no provision similar to rule 78 of the Industrial Disputes (Central) Rules in that case. I am unable to accept the distinction sought to be made by learned counsel. Even for invoking Rule 78, the petitioner ought to have approached the appropriate forum without any delay. As rightly pointed out by learned counsel for the respondent, if Rule 78 has to be applied, the question will certainly arise whether any of the persons who was appointed by the Bank and who was junior to the petitioner should be sent out of service and the

petitioner be appointed in his place. At any rate, the alleged non-compliance with Rule 78 will not absolve the petitioner from explaining the inordinate delay or compel this court to grant the relief to the petitioner by exercising its discretion under extraordinary power.

10. The fact that the Bank had entered into settlement with the Union during the pendency of the writ petition and absorbed certain employees after interview on satisfaction of "certain terms and conditions, would not help the petitioner as he was not represented by the unions. Learned counsel for the petitioner contends that the Bank being aware of the pendency of the writ petition ought to have issued a notice to the petitioner to appear for the interview on the basis of the settlements referred to in the additional affidavit. There is no merit in the contention. As per the additional affidavit, the settlement is u/s 18(1) of the Act. The settlement will be available only to those employees who were represented by the Federation.

11. In the view I have taken above, it is not necessary for me to refer to and consider the various judgment cited by learned counsel for the petitioner in support of her contentions relating to the entitlement of the petitioner to re-employment or absorption. However, I must refer to the judgments cited by her relating to the aspect of delay. Reliance is placed by her on Collector, Land Acquisition, Anantnag and Another Vs. Mst.

Katiji and Others, . The question before the Court was whether the High Court was justified in refusing to condone a delay of four days in filing a

Civil Appeal against the judgment of the Trial Court enhancing compensation in respect of acquisition of lands for a public purpose to the extent of

nearly 14 lakhs rupees by making an upward revision of the order of 800% (from Rs. 1000 per kanal to Rs. 8000 per kanal). While setting aside

the order of the High Court and allowing the appeal, the Supreme Court laid down certain general principles to the effect that the expression

sufficient cause" employed in Section 5 of the Indian Limitation Act has conferred the power on Courts to condone delay in order to enable the

courts to do substantial justice to parties by disposing of matters on merits. It was held that the said expression was adequately elastic to enable the

Courts to apply the law in a meaningful manner which subserve the ends of justice that being the life-purpose for the existence, of the institution of

Courts. It was also pointed out that the Supreme Court has been making a justifiably liberal approach in matters instituted in that court. The general principles laid down in that judgment will not help the petitioner in the present case which has arisen under Article 226 of the Constitution of India with reference to which ""Bhoop Singh"" (Supra) has prescribed the rule.

12. Learned counsel invited my attention to the judgment in Ram Chandra Yadav Vs. State of Bihar and Others, and submitted that relief was

granted in that case though the petitioner approached the court after considerable time lapse. The judgment turned on the facts of the case and has no bearing in the present case.

13. In the circumstances, I am convinced that the petitioner has not bonafide disclosed all the relevant facts and there is no valid explanation for the inordinate delay of twelve years in approaching the Court. Consequently, the petitioner is not entitled to the discretionary relief in this proceeding.

14. The Writ petition suffers dismissal. But, there will be no order as to costs.