
(2015) 04 KAR CK 0221
In the Karnataka High Court
Case No : Writ Petition No. 8256/2006(S)

Ramakrishna Kancherla

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 24-04-2015

Acts Referred:

Citation : (2015) 04 KAR CK 0221

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : Vijayakumar, Advocate for B.B. Bajentri, Adv, for the Appellant

Final Decision : Partly Allowed

Judgement

Vineet Saran, J.

1. The petitioner has approached this Court by filing this petition with the prayer for quashing the order by which he was not permitted to join as Manager of the erstwhile Global Trust Bank Limited (hereinafter referred to as "the GTB" for short) where he was duly appointed by letter dated 28.06.2004 and was to join duty on or before 28.07.2004. After hearing the parties, the writ petition was allowed by judgment and order dated 27.07.2011, with certain conditions. The said judgment was challenged in an intra Court appeal before the Division Bench of this Court, which, by judgment and order dated 29.11.2013, remanded the matter for fresh decision by this Court. Hence, this writ petition has been placed before this Court for hearing.

2. The brief facts of this case are that the petitioner was working as Branch Operations Manager with a private company. In response to an advertisement issued by the GTB, the petitioner had applied for appointment as Manager of the said bank. After passing the requisite tests/interviews, an appointment letter was issued on 28.06.2004 by the erstwhile GTB requiring the petitioner to join duty on or before 28.07.2004. A further condition was made to the effect that on the date of joining the Bank, the petitioner would be required to submit a relieving

letter from his earlier employer. After tendering his resignation on 14.07.2014 from the earlier company where he was working, and after obtaining the relieving letter from his earlier employer, the petitioner went to join the GTB on 27.07.2004, which was a day before the last date of joining i.e., 28.07.2004. Such facts are not disputed by the parties. The problem arose when a Scheme of amalgamation of the GTB with the Oriental Bank of Commerce (hereinafter referred to as "the OBC" for brevity) was sanctioned by the Central Government on 26.07.2004. In the said Scheme, Clause (8) of Chapter V provided that those employers who were working with the Bank before the close of business on 24.07.2004 would get continuity of services with respondent No. 3-OBC. However, in terms of the contract between GTB and respondent No. 3-OBC, sub-clause (2) of Clause 3 provided that all contracts and deeds etc., made by the GTB would bind the OBC. After considering the totality of the circumstances, by order dated 27.07.2011, the writ petition was allowed and the operative paragraphs-15 and 16 are reproduced below:

15. Insofar as the petitioner's claim that he should be treated as an employee of the GTB and now the OBC, with effect from the date of his appointment namely, 28.6.2004, and that he should be paid all consequential benefits may not be reasonable as the petitioner had not joined the service either of GTB or the OBC as on 28.6.2004. He was however, entitled to report for duty before 28.7.2004 which he sought to do, but to direct the respondent - bank to appoint him from that date and to pay all consequential benefits would cast a burden on the respondent - Bank, which would be disproportionate to any damage and loss that the petitioner may have suffered on account of having been denied the employment. However, if he is directed to be taken into employment as Manager with the OBC, it should be with effect from 28.7.2004 and since he would certainly be entitled to compensation by way of damages, which need not be computed with any mathematical precision, it would be sufficient if he is granted a nominal amount of compensation, which in the opinion of this court, would be 30% of the salary and other benefits, which he would have been entitled to as a Manager with the OBC, with effect from 28.7.2004 and if he is treated as Manager of the Bank with effect from 28.7.2004 with continuity of service and such other consequential benefits, for purposes of his service and pensionary benefits, ends of justice are met. It is further ordered by way of abundant caution that the respondent - bank is at liberty to impose such other condition to bind the petitioner to render a minimum period of service compulsorily in order to be entitled to the compensation that is ordered to be paid.

16. Consequently, the impugned orders at Annexures J and K are quashed. The respondent - Bank shall issue appropriate orders in favour of the petitioner, within four weeks from the date of certified copy of the order, if not earlier.

The petition stands allowed in terms as above."

3. It appears that since the said order was not clear as there was no specific direction to the petitioner to join respondent No. 3-OBC, the same was

challenged by the OBC in W.A. No. 15505/2011. The Division Bench noted the submissions of the parties and after quoting the operative paragraph-15 of the judgment of the learned Single Judge, allowed the appeal and remanded the matter for fresh decision with the following observations:

"From the above order, it is clear to us that it is not possible for us to hold whether the learned Single Judge has directed the appellant Bank to issue an appointment order and take him into duty afresh by settling the arrears and other benefits at 30% of salary. As rightly pointed out by the learned counsel for the appellant, it is difficult for the appellant bank to implement the order on account of uncertainty in the order. In the circumstances, we are of the view that the order of the learned Single Judge has to be set aside and matter has to be reconsidered by the learned Single Judge in view of the ambiguity."

(emphasis supplied)

4. It may be noted that none of the findings recorded by the learned Single Judge were upset by the Division Bench. The matter was remanded for fresh decision "only in view of the ambiguity" in the order dated 27.07.2011 passed by the learned Single Judge, which was whether the Bank was to take the petitioner on duty or not.

5. The findings given in the earlier order of the writ Court remain intact wherein it has held that the petitioner would be entitled to the benefit of service, and the matter has been remanded back only for the purpose of removal of ambiguity in the order dated 27.07.2011. The Division Bench has itself recorded that "it is difficult for the appellant-OBC to implement the order on account of uncertainty in the order". In the aforesaid facts, I am of the view that at this stage, this Court need not enter into the merits of the case and would not be required to give fresh finding of facts, as the same have already been given in the earlier order dated 27.07.2011 and have not been upset in appeal.

6. As I have already observed herein above, the findings recorded by the learned Single Judge earlier have not been disputed by the appellate Court, and the matter has been remanded for removing the ambiguity in the said order dated 27.07.2011, and the intention of the learned Single Judge while passing the said order was clear that the petitioner would be entitled to the benefit of service and it was only with regard to the payment of arrears of salary from 28.07.2004 till the date of joining, which had been clarified that instead of payment of entire salary, the petitioner would be entitled to compensation by way of damages which was computed at 30% of the salary and other benefits. In such facts and circumstances of this case, it is clarified and directed that all other directions issued by the writ Court by order dated 27.07.2011 shall remain intact and be binding on the parties and it is further directed that respondent No. 3-OBC shall permit the petitioner to join duty in terms of the appointment letter dated 28.06.2004 within three months and the petitioner shall be entitled to all other benefits as had been granted and directed by the order dated 27.07.2011.

The writ petition stands allowed to the extent indicated above.

No order as to costs.