

(2004) 01 KAR CK 0075
In the Karnataka High Court
Case No : WA No's. 6291 and 6565 of 2000

State Bank of India and Others

APPELLANT

Vs

T.N. Jayaram

RESPONDENT

Date of Decision : 16-01-2004

Acts Referred:

Citation : (2004) ILR (Kar) 2268 : (2004) 5 KarLJ 592 : (2005) 1 KCCR 6 SN : (2005) 1 LLJ 88

Hon'ble Judges : P. Vishwanataha Shetty, J;Ajit J. Gunjal, J

Bench : Division Bench

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

Judgement

Ajit J. Gunjal, J.—Appellants in Writ Appeal No. 6291/2000 were the respondents and the appellant in Writ Appeal No. 6565/2000 was the petitioner in Writ Petition No. 2979/2000.

2. The petitioner as well as the respondents in the said Writ Petition have called in question the order passed by the learned Single Judge, wherein the learned Single Judge has held that notwithstanding the fact that the petitioner is not entitled to the relief sought for in the Writ Petition, however, has directed the respondents in the said petition to continue the services of the petitioner with a direction to the Bank to absorb the services of the petitioner in any of the vacancies of the post of Messenger and in the event if there is no vacancy as on today, continue the services of the petitioner as a Messenger till the vacancy is created in the said post.

3. The appellants (State Bank of India) in Writ Appeal No. 6291/ 2000 have called in question that part of the order wherein the learned Single Judge has given the above direction. Writ Appeal No. 6565/ 2000 (the employee) has challenged that part of the order wherein the learned Single Judge has recorded a finding that he had not worked continuously for a period of 30 days in a calender year.

4. Brief facts as could be gathered from the memorandum of Writ Petition are as follows:

Parties would be referred to their rankings in the Writ Petition.

The petitioner had joined State Bank of India in Bangalore as a temporary Messenger on daily wages against a sanctioned post in 1981. The petitioner had worked for 117 days in 1992; 90 days in 1993; 143 days in 1994 and 84 days in 1995. According to the petitioner, he had worked for more than 479 days during the said period i.e., between 1992-95. He was appointed as a temporary messenger on a salary Rs. 1600/- plus allowances. According to the petitioner even though he was eligible in all respects for a permanent employment his case was not considered by the bank though he had submitted a detailed representation in this regard. But however there was no response from the bank. The petitioner's further case is that he is discharging his duties as temporary Messenger to the satisfaction of all concerned. According to the petitioner, he has been working in a sanctioned post and his services are not yet regularized even though he had worked as temporary Messenger for a substantial period. It is his case that there is sufficient and heavy work and the, bank requires the services of the petitioner. The petitioner had applied in response to the notice of the bank for recruitment to regular post. But however nothing was heard from the bank to regularise the services of the temporary employees for the reasons best known to it. It is his case that taking into consideration his long duration as an employee of the bank, it is just and proper for the bank to absorb him as a regular employee. The petitioner also gave certain illustrations wherein in an identical situation the bank had appointed temporary messengers on a continuous basis and subsequently regularized by virtue of a direction of this Court in the Writ Petition which they had filed. He submits that in view of the interim orders granted in those Writ Petitions wherein the employees were directed to be continued; it is but natural for the Court to issue a direction to continue the employees in the same post and regularise them. Based on this he has sought for the following relief.

"a) Issue a writ of mandamus directing the respondents to consider the services put in by the petitioner as a temporary messenger and absorb the services of the petitioner in the respondent Bank, in the interest of justice;

b) grant such other and further relief/s as this Court may deem fit to grant in the facts and circumstances of the case."

5. The bank in pursuance of the notice issued entered appearance and filed its detailed statement of objections. In the statement of objection the contention of the respondent bank is that the Writ Petition is filed on the basis of misconception regarding ad hoc temporary appointments made in the respondent Bank and existing law on the subject. It is contended by the bank that it has engaged temporary employees especially in the sub-staff to work on daily wages in the leave/casual vacancies of messengers. There was a long standing demand

from the association of all India Bank Employees Federation that these temporary employees should be considered for absorption in permanent vacancies. A Bipartite settlement dated 17.11.1987 was entered into which was subsequently modified by another agreement dated 16.7.1988 under which an option was given for being considered for permanent absorption to all the eligible temporary employees staff on certain terms and conditions in the said agreement. In so far as the first contention of the petitioner in respect of certain other employees having been given the benefit of permanent appointment, the Bank reiterated that all those persons had completed more than 1630 days, in respect of R.N. Murthy 1630 days and 3053 days in respect of P. Narayanachari and they had applied for absorption pursuant to an advertisement released by the bank during 1998. Both of them having been successful in the interview were absorbed in the permanent post in due course. They submitted that these two stray incidents cannot have any bearing on the facts of this case. In so far as the another employee, namely, Nirmala Bai, it is contended by the bank that she had completed 240 days continuous temporary service which was dealt with as per the order of this Court in Writ Petition No. 13845/87. The Bank further contended that the petitioner at no point of time completed 240 days continuously in the temporary cadre in order to be placed in identical situation as that of Nirmala Bai. Consequently, they submitted that the petitioner is not entitled to any of the reliefs sought by him in the Writ Petition.

6. A rejoinder was filed to the said statement of objections by the petitioner. In the said rejoinder the petitioner reiterated his stand and relied on a certificate issued by the Asst. General Manager, a copy of which is produced at Annexure-G stating that the petitioner was engaged on daily wages on 9.6.1981, 10.6.1981, 29.6.1981 and 30.6.1981 for arranging of records and vouchers in the record room at its branch. The rejoinder prompted the bank to file its additional statement of objections. In the additional statement of objections, the bank denied that the petitioner has fulfilled all the eligibility criteria as per the terms of bipartite settlement dated 17.11.1987 as modified. In so far as the certificate which is produced at Annexure-G along with the rejoinder statement, it was submitted that it relates to the engagement of the petitioner for four days for arranging the records and vouchers in the record room. According to them, the settlement did not provide for daily wagers engaged for shifting of records etc; to be considered eligible for a permanent absorption, as only daily wagers who were engaged as messengers will be considered under the said bipartite settlement. Consequently, they submitted that the reference to the four days of working by the petitioner cannot be taken into account for the purpose of calculating the total number of days for which the petitioner had been engaged as daily wager. According to the bank, the petitioner had worked only for a period of 27 days from 7.5.1981 to 9.6.1981. The petitioner once again filed a rejoinder to the additional statement of objections reiterating his stand that he is entitled for the relief sought for in the Writ Petition.

7. The learned Single Judge on consideration of the material ultimately found

that the petitioner had not worked continuously for a period of 30 days. The learned Single Judge came to such a conclusion on the basis of the settlement arrived at between the bank and its employees. The learned Single Judge relied on category "C" of the settlement to arrive at the said conclusion. He accepted the contention of the bank and recorded a positive finding that under the said scheme the petitioner is not entitled for any absorption. But however granted certain relief to the petitioner in view of the fact that an interim order was granted by this Court in the said Writ Petition on 2.2.2000. Another aspect which weighed with the learned Single Judge was that the petitioner was 40 years old, married and having children. In view of this, the learned Single Judge took a very sympathetic view and directed that it is just and necessary in the circumstances of the case for the bank to accommodate the petitioner as and when vacancy arises on the ground that the bank is an organization. In the circumstances, the learned Single Judge disposed of the Writ Petition in the following terms:

"Writ Petition is disposed of with a direction to the Bank to absorb the services of the petitioner in any of the vacancies of the post of messenger, in the event there is no such vacancy as on today, continue the services of the petitioner as a messenger till the vacancy is created in the said post."

This order of the learned Single Judge, as stated earlier, is challenged by both the Bank as well as the petitioner.

8. Mr. Ramdas, learned Senior Counsel appearing for the Bank, would strenuously contend that the learned Single Judge having recorded a finding that the petitioner had not worked continuously for a period of thirty days, excluding the four days, ought to have held that the petitioner was not eligible for absorption and not entitled for absorption in any of the vacancies of the post of messenger. He submitted that the mere fact that in the Writ Petition an interim order was granted, that by itself will not give any right to the petitioner to seek a permanent employment. In this regard he relied on a judgment of the Hon'ble Supreme Court in the case of State of U.P. and Others Vs. Raj Karan Singh, He further submitted that in view of the settlement arrived at between the bank and its employees, it is not open for the petitioner to seek absorption in the permanent vacancy. He invited our attention to the appointment letter which is marked as Annexure-B in the proceeding. According to him, the very appointment letter was subject to certain terms and conditions and one of them being his right to claim for absorption in the bank's permanent establishment in any category.

9. Mr. Prasanna Kumar, learned Counsel appearing for the petitioner sought to support that part of the order of the learned Single Judge which was in his favour and in so far as the finding recording by the learned Single Judge that the petitioner was not eligible for absorption, he submitted that the four days which he had worked cannot be excluded from computation of 30 days. He submits that during those four days the petitioner was working as a messenger in the bank

though in a slightly different capacity of keeping the records and vouchers etc. He submit that in view of the fact that he had worked continuously for a period of 30 days during the relevant point of time he was entitled for absorption in the permanent vacancy. He relied on a judgment of the Hon"ble Supreme Court in the case of Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation,

10. We have given our anxious consideration to the submissions of both Mr. Ramdas, learned Senior Counsel as well as Mr. Prasanna Kumar, learned Counsel for the petitioner.

11. We find that the contentions raised by Mr. Prasanna Kumar, learned Counsel appearing for the petitioner do not commend to us. The direction issued by the learned Single Judge is in the form of largesse given to him. In the bipartite settlement which was being modified from time to time, category "C" reads as follows:

"The following category of temporary employees in subordinate cadre will be given a chance for being considered for permanent appointment in the Bank's service against vacancies likely to arise on 1987 to 1991.

(i) Category "A" : Those, who have completed 240 days temporary service in 12 months or less after 1.7.1975.

(ii) Category "B": Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1.7.1975.

(iii) Category "C": Those who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or a minimum of 70 days" aggregate temporary service in any continuous block of 36 calendar months after 1.7.1975."

It is clear that the petitioner having not worked continuously for a period of 30 days at any given point of time was not entitled for absorption in the permanent vacancy. The finding recorded by the learned Single Judge that in view of the fact that the petitioner does not come under the said category "C" as he was not eligible for absorption does not call for interference. The learned Single Judge has further found that after going through the relevant clause ie., category "C", the said four days cannot be counted for the purpose of calculating 30 days as he was appointed only on a daily wages for the said four days. On the said four days the petitioner was working only in the capacity for arranging of records and vouchers in the record room of the branch. This is evident from the certificate issued by the bank which is produced by the petitioner himself which is referred to above at Annexure-G. The specific stand of the bank is that under the settlement referred to above, a daily wagger who was engaged for ad hoc purpose like shifting of records will not be considered eligible for permanent absorption as only daily wagers who were engaged as messengers were considered. In view of the fact that the petitioner falls short of the required 30 days by four days, the

petitioner cannot seek absorption in a permanent capacity in the employment of the bank. We are constrained to observe that the petitioner has not made out any legal right for seeking a permanent appointment. The fact that he had worked for few days during every year between 1992 and 1995 does not entitle him to claim regularisation or for seeking permanent appointment without undergoing the process of selection. The bank obviously, in the circumstances, cannot recruit the petitioner or give him employment on permanent basis merely on accepting the category of the petitioner. The proper and appropriate course for the petitioner is to apply for the selection when the applications are invited and request that the services rendered by him from time to time is to be considered if it becomes necessary. In so far as the temporary employment is concerned, whenever there was a need he had been appointed. When there is no need, the question of directing the bank, under the circumstances, to appoint the petitioner as a messenger would not arise.

12. The next question which requires our attention is whether the petitioner can be directed to be continued in the said capacity in view of the interim order granted by this Court in the Writ Petition. The petitioner, it appears, continued in service in the said capacity pursuant to an interim order granted by this Court. The question is whether such an interim order granted pending disposal of the Writ Petition would enure to the benefit of the petitioner at the final disposal of the proceedings. The Hon"ble Supreme Court in identical circumstances has ruled that regularisation cannot be considered if the concerned employee is continued in the services on the basis of an interim order of the Court. The Hon"ble Supreme Court has said that such an interim order pending disposal of the Writ Petition does not advance his case any further. In this regard it is necessary to extract the observation made by the Hon"ble Supreme Court in the case of STATE OF U.P. AND ORS. v. RAJ KARAN SINGH (Supra) which is as follows:

"Besides, merely because a person continues under the interim orders of the Court, such continuance of the post cannot and, in this case, does not confer on him any right for continuance, it does not enhance his case for regularisation. It is only an interim arrangement pending decision by the Court and cannot disturb the position in law or equities, as on the date of the petition.

We, therefore, allow this appeal, set aside the order dated 26.10.1994 of the Division Bench of the High Court, restore the order of 27.4.1989 and make it absolute."

13. It is not necessary for us to refer to the judgment cited by Mr. Prasanna Kumar, which, according to us, is not applicable to the facts of the present case.

14. In view of what is stated above, we are of the view that the direction issued by the learned Single Judge in the operative portion of the order, as extracted above, requires interference in this appeal. In the circumstances, we are constrained to hold that the petitioner is not entitled to any relief at all.

Consequently, the following order is passed.

15. Writ Appeal No. 6291/2000 filed by the State Bank of India is allowed and Writ Appeal No. 6565/2000 filed by the petitioner stands dismissed. The resultant effect is that the Writ Petition filed by the petitioner stands dismissed as one devoid of any merit. However, it is made clear that if the petitioner is otherwise now entitled for regularisation, the dismissal of the Writ Petition will not come in the way of Bank absorbing him in service or continuing him in service on temporary basis if permissible in law. Parties are directed to bear their own costs.