(1997) 08 KL CK 0020

In the High Court Of Kerala

Case No : W.A. No. 721/97

State Bank of India APPELLANT

Vs

E.K. Andrew and Another RESPONDENT

Date of Decision : 01-08-1997

Acts Referred:

Banking Regulation Act, 1949 — Section 36AA(2)

Citation : (1997) 08 KL CK 0020

Hon'ble Judges : K.G. Balakrishnan, J;B.N. Patnaik, J

Bench : Division Bench

Advocate : P.G. Parameswara Panicker, for the Appellant; T.L. Ananthasivan, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Patnaik, J.—The first Respondent in O.P. No. 7517 of 1988 is the Appellant. The Petitioner in the O.P. (1st Respondent herein) was serving as Deputy General Manager of the Bank of Cochin. While he was working so, the Board of Directors of the Bank, as per Ext. P-1 resolution dated 18th June 1979, decided to appoint him as Chairman and Chief Executive Officer of the Bank for a period of two years subject to the approval by the Reserve Bank of India. Approval was accorded as per Ext. P-3. On completion of the period of two years it was extended for a further period of three years, as per Ext. P-2 resolution dated 12th March 1981. That was also approved by the Reserve Bank of India as per Ext. P-4. His term of office was to expire on 17th June 1984. But, on 18th November 1982 the Reserve Bank of India (2nd Respondent herein) initiated a disciplinary proceeding against the Petitioner u/s 36AA(2) of the Banking Regulation Act, 1949 and ultimately terminated his appointment as Chairman with effect from 2nd April 1983. His appeals to the higher authorities were rejected. But, finally the order of cancellation of his appointment was set aside by this Court in O.P. No. 7316 of 1991. That was confirmed in appeal and SLP filed by the Respondents before the Supreme Court was also dismissed. Thus he was deemed to hold the post of Chairman till 17th June 1984. Bank of Cochin Ltd., was later amalgamated with the first Respondent in the O.P.-State Bank of India (Appellant herein) with effect from 9th August 1985. After the final judgment, the Petitioner made representations to the State Bank of India for his absorption in a suitable post. All his representations were turned down on the ground that he had no lien in the post of Deputy General Manager after he became the Chairman of the Bank. Since the term of office as Chairman expired on 17th June 1984, he was no longer in service of the Bank of Cochin. The Petitioner, therefore, filed the writ petition (O.P. No. 7517 of 1988) challenging the order of the first Respondent refusing to absorb him in service and for issue of a direction to the State Bank of India to pay the arrears of salary due to the Petitioner from 2nd April 1988, the date on which his disqualification for re-employment expired.

2. Learned Counsel for the Appellant herein (Respondent No. 1 in the O.P.) contended inter alia that the Petitioner in the O.P. had ceased to be a member of the staff with effect from 18th June 1979 when he relinquished his post as Deputy General Manager and took charge as Chairman of the Bank. His appointment as Chairman was not by way of promotion or deputation. There is no material on record to show that the Petitioner retained his lien in the post of Deputy General Manager after his appointment as Chairman. Cancellation of the order of removal from the post of Chairman would not entitle him to claim absorption in the first Respondent-Bank as a matter of right. The Petitioner was not in the rolls of the Bank of Cochin at the time of amalgamation. The Bank of Cochin has already disbursed to the Petitioner amounts due to him by way of Provident Fund and Gratuity. He ceased to be an employee of the Bank of Cochin. It is further stated that the Bank of Cochin had filed a suit (O.S. No. 153 of 1984) in the Court of the Sub Judge, Cochin against the Petitioner and six Ors. and the suit was decreed with a direction to realise an amount of Rs. 1,26,27,000 from the Defendants. The Petitioner''s appeal against that judgment was dismissed by this Court in A.S. No. 69 of 1991 and SLP filed before the Supreme Court was also dismissed, by order dated 22nd November 1993. Therefore, the Decree against the Petitioner has become final. Even if any amount is due to the Petitioner from the first Respondent-Bank (Appellant herein), they are entitled to adjust the same against substantial amounts due to them as per the judgment and Decree in O.S. No. 153 of 1984.

3. Learned Counsel for the first Respondent herein (Petitioner in the O.P.) has inter alia contended that the post of Chairman was a tenure post for a fixed period and the Petitioner being a permanent employee of the Bank of Cochin as Deputy General Manager, he was entitled to be reinstated as Deputy General Manager, after the expiry of the term of office of the Chairman. Learned Counsel for the first Respondent also disputes about the payment of gratuity though it is admitted that the Petitioner has withdrawn the provident fund. Mere withdrawal of provident fund does not raise any presumption that the appointment of the Petitioner came to an end. The plea of adjustment is also not tenable according

to law.

4. Learned Single Judge observed that the Petitioner had retained his lien in the post of Deputy General Manager after his appointment as Chairman. By 17th June 1984 when the term of office of Chairman would have expired, the Petitioner had got a number of years more to serve in the Bank before his retirement on attaining the age of 60 years. No plea of adjustment was raised by the Appellant before the learned Single Judge. It was therefore, held by the learned Single Judge that on amalgamation of the Bank of Cochin with the State Bank of India the Petitioner was entitled to be absorbed in a corresponding post and was entitled to continue till he attained the age of superannuation with all attendant benefits, including arrears of salary. The Appellant has challenged this finding in this appeal.

5. There is no dispute that at the time of appointment of the Petitioner as Chairman of the Bank of Cochin, he was holding the post of Deputy General Manager. He was quite young then. He would not have attained the age of superannuation by 17th June 1984 when his term of office of appointment as Chairman would have expired. There is also no dispute that he had been a permanent employee of the Bank of Cochin. In this situation, it is not expected that the Petitioner would have relinquished the job after the expiry of the term of office of Chairman. The amalgamation took place on 9th August 1985. Thus, before the amalgamation he would have continued as Deputy General Manager of the Bank. The fact that he continued to be an employee of the Bank of Cochin by the end of 31st December, 1983 is born out from Ext. P-10, which is the Directors'' report regarding the number of employees employed during the financial year. It is noted that the Petitioner was removed from the post of Chairman on 2nd April 1983 and he was a whole time employee up to 1st April 1983. Since his removal was found to be unjustified, he therefore continued to be a whole time employee beyond 1st April 1983. There is nothing on record to show that he was permanently appointed as the Chairman of the Bank and that he had relinquished the post of Deputy General Manager after becoming the Chairman. Thus the presumption is that he had retained lien in the post of Deputy General Manager while continuing as Chairman.

6. The Supreme Court in Anil Kumar Soni Vs. The Managing Director, Punjab Financial Corporation and another, under similar circumstances, came to a similar finding. There the Appellant was holding the post of Assistant Technical Officer and he was confirmed in that post. On direct recruitment he was selected to a new cadre, a post of Assistant Manager. His service as Assistant Manager was later terminated. He made a representation to take him back as Assistant Technical Officer. His request was turned down on the ground that since the Appellant was selected for the post of Assistant Manager, the earlier post of Assistant Technical Officer held by him stood abolished and therefore there was no post of Assistant Technical Officer to which the Appellant could be appointed. This contention was negatived by the Supreme Court by holding that:

...It would be against all canons of justice that a confirmed employee of the Corporation though allowed to compete for a new cadre post by direct recruitment but having not been confirmed on such post is not allowed to claim his right even on the lower post on which he had permanent lien to continue. It would be a travesty of justice to throw the person on the streets after a period of service of nine years in the Corporation. The post of Assistant Technical Officer held by the Appellant as a confirmed employee, could have only been abolished in case he was confirmed on the post of Assistant Manager. The mere selection on the new cadre post of Assistant Manager was not sufficient for abolishing the post of Assistant Technical Officer cannot be accepted. The appointment in the new cadre post as mentioned in the resolution of the Board means confirmed appointment on such post. Hence though the order of termination of the Appellant''s service as Assistant Manager is valid, the Corporation is directed to allow the Appellant to continue on the post of Assistant Technical Officer (Textiles) on which he had already been confirmed with all the back wages and other benefits.

The ratio laid down in that decision squarely applies to this case also. Hence the Petitioner was entitled to hold the post of Deputy General Manager on termination of the period of appointment as Chairman of the Bank.

7. There is nothing on record to show, much less is there any evidence, proving that the Petitioner is entitled to an ascertained sum and that which can be readily adjusted against the amount payable under the said decree. In Lakshmichand and Balchand Vs. State of Andhra Pradesh, it is pointed out that the claim is founded in the doctrine of equitable set off. But we do not find evidence before us to bring the case within the operation of the doctrine. The benefit of the provision of adjustment can be claimed only if the amount sought to be retained is an ascertained sum, an amount which can be readily adjusted against the amount payable under a decree or otherwise. The amount sought to be adjusted is yet to be determined as a liability against the first Respondent and as such the provision of adjustment cannot be invoked. If a case is not one where cross demands rise out of the same transaction or the demands are so connected in their nature and circumstances and they can be looked upon as part of that transaction, the benefit of adjustment cannot be allowed.

8. For the reasons stated herein above, we find no merit in this appeal. The appeal is dismissed. No costs.

