

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

O.P.No. 16856 of 2000 (F)

PETITIONER:

**P.V. KUTTAPPA PANICKER,
PLAMPARAMBIL HOUSE,
ERUVALLIPRA, THIRUVALLA.**

**BY ADVS.SRI. S. SUBHASH CHAND
SRI. V. JINACHANDRAN
SMT. V. SETHUKUTTY AMMA**

RESPONDENT(S):

- 1. THE MANAGING DIRECTOR,
STATE BANK OF TRAVANCORE, HEAD OFFICE POOJAPPURA,
THIRUVANANTHAPURAM.**
- 2. THE REGIONAL MANAGER,
STATE BANK OF TRAVANCORE, ZONAL OFFICE,
ERNAKULAM.**

R, BY ADV. SRI.P.RAMAKRISHNAN

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 24-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

O.P. No. 16856 of 2000 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT. P-1: TRUE COPY OF THE APPOINTMENT ORDER DATED 07.05.1965 ISSUED TO THE PETITIONER BY THE MANAGER, CIVIL STATION BRANCH OF STATE BANK OF TRAVANCORE.

EXT. P-2: TRUE COPY OF THE APPOINTMENT ORDER DATED 10.07.1965 ISSUED TO THE PETITIONER.

EXT. P-3: TRUE COPY OF THE APPOINTMENT ORDER DATED 13.09.1965 ISSUED TO THE PETITIONER.

EXT. P-4: TRUE COPY OF THE APPOINTMENT ORDER DATED 04.09.1965 ISSUED TO THE PETITIONER.

EXT. P-5: TRUE COPY OF THE JUDGMENT DATED 09.02.2000 IN O.P. NO. 5954/1995.

EXT. P-6: TRUE COPY OF THE ORDER DATED 20.04.2000 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

P.A. TO JUDGE

SHAJI P. CHALY, J.

O.P. No. 16856 of 2000 (F)

Dated this the 24th day of June, 2015

JUDGMENT

This original petition is filed by the petitioner seeking to quash Ext.P6 order passed by the 1st respondent dated 20.04.2000, by which the petitioner was declined the benefit of Bipartite Settlement which came into force with effect from 01.01.1966.

2. The grievance voiced by the petitioner in this original petition is the refusal of respondents to reckon the temporary period of service put in by the petitioner in the Bank prior to his absorption permanently in calculating his service benefits inclusive of pensionary benefits. Brief facts relevant for the disposal of the case are as follows:

3. The petitioner retired from the service of the respondent Bank on 30.06.1997 while working as a Record Keeper in the respondent Bank. Petitioner has entered service of the Bank as a Watchman temporarily for the

periods covered by Exts.P1 to P3 and thereafter he was absorbed as a regular Watchman by Ext.P4 order dated 04.09.1965. Thereafter he was put on probation in the post of regular Watchman up to 20.03.1966.

4. Further contention of the petitioner is that at the time of his regular appointment as per Ext.P4, the service condition of bank employees were governed by the provisions contained under the 'Desai Award' and in Ext.P4 appointment order, it was notified by the Bank Authorities that he will be governed by the provisions of the Desai Award.

5. Be that as it may, petitioner contends that while he was undergoing probation as per Ext.P4 order, the First Bipartite Settlement was brought into force and as per Clause 20.8 of the said Bipartite order, temporary service rendered by the petitioner totally for a period of 133 days is entitled to be reckoned for the purpose of service benefits etc.etc.

6. Petitioner further contended that even though he has represented to the bank to reckon the period of

temporary service they went unheard and there upon he had approached this Court and secured Ext.P5 judgment, directing the Bank to consider the representation made by him dated 07.01.1995. As evident from the records, pursuant to the direction issued by this Court, Ext.P6 order was passed by the 1st respondent holding that the petitioner is not entitled to get benefit of clause 20.8 of the First Bipartite Settlement, since the benefit provided thereunder is available to those temporary employees who are appointed against the permanent vacancy after 01.01.1966 and eventually selected for the post. It is thus aggrieved by the order passed by 1st respondent, petitioner has filed this original petition.

7. Respondents have filed counter affidavit commensurate with Ext.P6 order passed by the Bank and stating that petitioner is not entitled to get benefit of the Bipartite Settlement especially due to the fact that petitioner did not care to make any claim on the basis of clause 20.8 of

the Bipartite Settlement till 1995. Further contention of the bank is that, petitioner was appointed on probation with effect from 20.09.1965 and has completed his probation on 20.03.1966, i.e., long before the signing of the Bipartite Settlement on 19.10.1966 and therefore, he is not entitled to get the benefit of clause 20.8. Even though, in the counter affidavit, respondents have stated that the Bipartite Settlement has come into force on 19.10.1966 only, in the impugned order the date on which the Bipartite Settlement has come into force is shown as 01.01.1966. It is the further contention of the Bank that the petitioner had approached this Court by filing O.P. No. 8269 of 1989 and it was dismissed and the judgment has become final and conclusive and therefore seeks dismissal of the original petition.

8. Apart from the same, it is also contended that clause 20.8 of the Bipartite Settlement is not at all applicable to the petitioner who was already appointed on probation and confirmed prior to the coming into operation of the said

clause and the terms of the said clause are clearly prospective and cannot be construed in any manner to apply to the workmen who are already appointed on probation and confirmed long before. To put it briefly, the contention of the bank is that, the petitioner is not entitled to get the benefit provided under the Bipartite Settlement since he joined the service of the Bank much prior to coming into force of the Bipartite Settlement.

9. Heard learned counsel for the petitioner and learned counsel for the respondents, gone through the pleadings, documents and rival contention of the parties.

10. The temporary service rendered by the petitioner for a total period of 133 days in the bank is not disputed by the Bank. The Bank has absorbed the petitioner as per Ext.P4 order dated 04.09.1965 as a regular employee. In the appointment order, apart from other conditions, Bank has made an unequivocal statement that the petitioner will be governed by the Desai Award or any other Award that may

come into force as regards the other terms and conditions of the service. The thrust of the contention raised by the petitioner for reckoning his temporary service rendered for a period of 133 days in accordance with the terms of Bipartite Settlement referred above is that, the promise rendered in Ext.P4 is binding on the Bank. On the other hand, learned counsel for the respondents contend that under the Bipartite Settlement there is no mention about Desai Award and therefore petitioner cannot be heard to say that merely because the Bank has promised to the petitioner for implementation of Desai Award, he is not entitled to get benefits of the Bipartite Settlement. Even though the Bipartite Settlement is not produced along with the original petition or the counter affidavit, Clause 20.8 of the Bipartite Settlement is extracted in Ground D, which reads as follows.

"A temporary workman may also be appointed to fill a permanent vacancy provided that such temporary appointment shall not exist a period of three months during which the Bank shall make arrangements for filling up the vacancy permanently. If such temporary workmen is eventually selected for filling the vacancy, the period of such temporary

employment would be taken into account as part of his probationary period."

11. On a reading of clause 20.8, according to me, any person who was in service when the Bipartite Settlement was brought into force is entitled to get benefit of the said Settlement. Admittedly petitioner was in regular service of the bank as per Ext.P4 as a probationer against a permanent vacancy and therefore, when the Bipartite Settlement was brought into force, petitioner who was already in service is entitled to be covered under the same. So also, whenever a labour/employment oriented settlements are interpreted and there arises any doubt concerning any clause contained therein, courts should always lean in favour of the workman or employee with the avowed object of protecting their interests and rights. In that view of the matter, I am of the considered opinion that petitioner is entitled to succeed in the original petition. Accordingly, Ext.P6 order passed by the 1st respondent is set aside and the respondents are directed to reckon the temporary period of service of 133 days

rendered by the petitioner for enabling him to acquire the service benefits as provided under the Bipartite Settlement which was in force at that point of time.

12. The 1st respondent is directed to pass consequential orders and disburse all benefits including arrears if any, to the petitioner within a period of three months from the date of receipt of a copy of this judgment.

Original petition is allowed. In the facts and circumstances of the case, no order as to costs.

Sd/-

SHAJI P. CHALY
JUDGE