

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

WA.No. 1539 of 2015

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AGAINST THE JUDGMENT IN W.P.(C).NO.26042 OF 2010, DATED 20-05-2015
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APPELLANT(S)/RESPONDENTS 3, 6, 7, 11 TO 23, 26, 29 TO 35, 37, 38 AND 40 :

- 1. P.SIVADASAN,
KAKKAYUR BRANCH, SOUTH MALABAR GRAMIN BANK, P.O.KAKKUR,
KOZHIKODE DISTRICT-673 619,
(NOW WORKING AS OFFICE ATTENDANT KOKKALLUR BRANCH
KERALA GRAMIN BANK, P.O.KOKKALLUR, KOZHIKODE-673 612)**
- 2. N.M.VENUGOPALAKRISHNAN,
KOTTAKKAL BRANCH, SOUTH MALABAR GRAMIN BANK, KOTTAKKAL,
MALAPPURAM DISTRICT, PIN-676 503,
(NOW WORKING AS OFFICE ATTENDANT, VENNIYUR BRANCH,
KERALA GRAMIN BANK, P.O.VENNIYUR, MALAPPURAM DISTRICT.)**
- 3. ANILKUMAR K.C.,
VELOM BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O.POOLAKKOOL, KOZHIKODE, PIN-673 212.
(NOW WORKING AS OFFICE ATTENDANT,
PERAMBRA BRANCH, KERALA GRAMIN BANK, KOZHIKODE DISTRICT.)**
- 4. USMAN N.K.,
ARIYALLUR BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O.ARIYALLUR, MALAPPURAM, PIN-676 312,
(NOW WORKING AS OFFICE ATTENDANT, ARIKKULAM BRANCH,
KERALA GRAMIN BANK, KOZHIKODE DISTRICT, PIN-673 620.)**
- 5. K.T.SAJITHKUMAR,
MELADY BRANCH, SOUTH MALABAR GRAMIN BANK, P.O.PAYYOLI,
KOZHIKODE DISTRICT-673 315,
(NOW WORKING AS OFFICE ATTENDANT, VATAKARA BRANCH,
KERALA GRAMIN BANK, P.O.PAYYOLI, KOZHIKODE DISTRICT.)**
- 6. P.PSINDHU,
THODANNUR BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O.THODANNUR, KOZHIKODE DISTRICT, PIN-673 615,
(NOW WORKING AS OFFICE ATTENDANT, IDACHERRY BRANCH,
KERALA GRAMIN BANK, KOZHIKODE DISTRICT.)**

7. T.P.BABU,
PAYYOLI BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O PAYYOLI ANGADI, KOZHIKODE DISTRICT-673 617,
(NOW WORKING AS OFFICE ATTENDANT, PAYYOLI BAZAR BRANCH,
KERALA GRAMIN BANK, KOZHIKODE DISTRICT.)
8. JOSE MATHEW,
KODIYATHUR BRANCH, SOUTH MALABAR GRAMIN BANK,
KODIYATHUR, KOZHIKODE DISTRICT, PIN-673 614,
(NOW WORKING AS OFFICE ATTENDANT, KODIYATHUR BRANCH,
KERALA GRAMIN BANK, KOZHIKODE DISTRICT.)
9. N.MURALEEDHARAN,
NARIKUNNI BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O.NARIKKUNNI, KOZHIKODE DISTRICT-673 514,
(NOW WORKING AS OFFICE ATTENDANT,NARIKKUNNI BRANCH,
KERALA GRAMIN BANK, KOZHIKODE DISTRICT.)
10. RATNAKUMARI P., THUVVUR BRANCH,
P.O THUVVUR, MALAPPURAM DISTRICT, PIN-676 212,
(NOW WORKING AS OFFICE ATTENDANT, THUVVUR BRANCH,
KERALA GRAMIN BANK, KOZHIKODE DISTRICT.)
11. BALASUBRAMANIAM M.P.,
SHORNUR BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O.SHORNUR, PALAKKAD, PIN-676 004,
(NOW WORKING AS OFFICE ATTENDANT, SHORNUR BRANCH,
KERALA GRAMIN BANK, PALAKKAD DISTRICT.)
12. BINOY M., MALA BRANCH,
SOUTH MALABAR GRAMIN BANK, P.O.MALA, THRISSUR, PIN-680 101,
(NOW WORKING AS OFFICE ATTENDANT, PUZHAKKATTIRI BRANCH,
KERALA GRAMIN BANK, MALAPPURAM DISTRICT.)
13. CHANDRASEKHARAN M.,
EDACHERRY BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O.EDACHERRY, KOZHIKODE DISTRICT, PIN-673 502,
(NOW WORKING AS OFFICE ATTENDANT, NARIPPATTA BRANCH,
KERALA GRAMIN BANK, KOZHIKODE DISTRICT.)
14. SHIJU P.,
CALICUT CITY BRANCH, SOUTH MALABAR GRAMIN BANK,
KANNUR ROAD, KOZHIKODE- 673 001,
(NOW WORKING AS OFFICE ATTENDANT, MEDICAL COLLEGE
BRANCH, KERALA GRAMIN BANK, KOZHIKODE DISTRICT.)
15. SAHAJA M.K.,
VAZHAVATTA BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O.VAZHAVATTA, WAYANAD-673 574,
(NOW WORKING AS OFFICE ATTENDANT, KALPATTA BRANCH,
KERALA GRAMIN BANK, WAYANAD DISTRICT.)

16. SASIKUMAR K.K.,
KURUVATHUR BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O KURUVATHUR,KOZHIKODE-673 611,
(NOW WORKING AS OFFICE ATTENDANT, UNNIKULAM BRANCH,
KERALA GRAMIN BANK, KOZHIKODE DISTRICT.)
17. SATHYAN M.,
VADAKARA BRANCH, SOUTH MALABAR GRAMIN BANK,
VADAKARA P.O., KOZHIKODE-673 201,
(NOW WORKING AS OFFICE ATTENDANT, MELADY BRANCH,
KERALA GRAMIN BANK, KOZHIKODE DISTRICT.)
18. SASIKUMAR M.M.,
MACHUKUNNU BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O MACHUKUNNU,KOZHIKODE-673 112,
(NOW WORKING AS OFFICE ATTENDANT, MACHUKUNNU BRANCH,
KERALA GRAMIN BANK, KOZHIKODE DISTRICT.)
19. C.LATHA, VELLILA BRANCH,
SOUTH MALABAR GRAMIN BANK, VELLILA P.O.,
MALAPPURAM-676 502.
(NOW WORKING AS OFFICE ATTENDANT, VELLILA BRANCH,
KERALA GRAMIN BANK, KOZHIKODE DISTRICT.)
20. SUNILKUMAR V.,
THIRUVAMBADI BRANCH, SOUTH MALABAR GRAMIN BANK,
THIRUVAMBADI P.O., KOZHIKODE-673 117,
(NOW WORKING AS OFFICE ATTENDANT, IDACHERRY BRANCH,
KERALA GRAMIN BANK, KOZHIKODE DISTRICT.)
21. RAMESH K.L.,
VATTAMKULAM BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O VATTAMKULAM, MALAPPURAM-676 512,
(NOW WORKING AS OFFICE ATTENDANT, VATTAKULAM BRANCH,
KERALA GRAMIN BANK, MALAPPURAM DISTRICT.)
22. SUBRAMONIAN K.P.,
VALIAKUNNU BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O VALIAKUNNU, MALAPPURAM-676 501,
(NOW WORKING AS OFFICE ATTENDANT, VALIAKUNNU BRANCH,
KERALA GRAMIN BANK, MALAPPURAM DISTRICT.)
23. CHANDRAN T.P.,
KALADIKODE BRANCH, SOUTH MALABAR GRAMIN BANK,
KALLADIKODE P.O., PALAKKAD-678 506,
(NOW WORKING AS OFFICE ATTENDANT, ELAMKULAM BRANCH,
KERALA GRAMIN BANK, MALAPPURAM DISTRICT.)
24. UNNI P., HEAD OFFICE CREDIT WING,
SOUTH MALABAR GRAMIN BANK,MALAPPURAM-676 117.
(NOW WORKING AS OFFICE ATTENDANT, KONDOTTY BRANCH,
KERALA GRAMIN BANK, MALAPPURAM DISTRICT)

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25. UMMAR M.A.,
KAVUMANNAM BRANCH, SOUTH MALABAR GRAMIN BANK,
KAVUMANNAM P.O, WAYANAD-673 012,
(NOW WORKING AS OFFICE ATTENDANT, KAVUMANNAM BRANCH,
KERALA GRAMIN BANK, WAYANAD DISTRICT.)
26. SHOBANA A.,
PANDIKKAD BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O PANDIKKAD, MALAPPURAM-676 312,
(NOW WORKING AS OFFICE ATTENDANT, VANIYAMBALAM BRANCH,
KERALA GRAMIN BANK, MALAPPURAM DISTRICT.)
27. VASUDEVAN K.,
THAZHEKODE BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O THAZHEKODE, MALAPPURAM,PIN-676 361,
(NOW WORKING AS OFFICE ATTENDANT, THAZHEKKODE BRANCH,
KERALA GRAMIN BANK, KOZHIKODE DISTRICT.)

BY ADVS.SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.V.VARGHESE
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SMT.L.ANNAPOORNA

RESPONDENT(S)/PETITIONER AND RESPONDENTS 1, 2, 4, 5, 8, 9, 10, 24, 25, 27,
28, 36 AND 39 :

1. C.VISWANATHAN,
S/O.V.M.ANANTHAN NAIR (LATE), PUSHAPALAYAM, P.O.MAKKADA,
VIA KAKKODDI, KOZHIKODE.
2. THE CHAIRMAN,
SOUTH MALABAR GRAMIN BANK, HEAD OFFICE, A.K.ROAD,
MALAPPURAM-676 505.
3. THE GENERAL MANAGER,
SOUTH MALABAR GRAMIN BANK, MALAPPURAM-676 505.
4. P.UNNIKRISHNAN.
EDAVANNA BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O EDAVANNA, MALAPPURAM, PIN-676 541.
5. K.J.CHACKO,
CHAKKITTAPARA BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O.CHAKKITTAPARA, KOZHIKODE DISTRICT, PIN-673 526.
6. U.JAYAPAL,
VYTHIRI BRANCH, SOUTH MALABAR GRAMIN BANK, P.O VYTHIRI,
WAYANAD-673 576.

7. SREEDHARAN K.P.,
VALIYORA BRANCH, SOUTH MALABAR GRAMIN BANK, P.O VALIYORA,
MALAPPURAM DISTRICT, PIN-676 308.
8. GOPALAN C.,
KAYAKKODI BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O KAYAKKODI, KOZHIKODE DISTRICT, PIN-673 519.
9. SIVARAJAN V.V.,
KIZHISSERI BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O KUZHIMANNA, MALAPPURAM-676 412.
10. P.K.SUBRAMANIA PRASAD,
PATTAMBI BRANCH, SOUTH MALABAR GRAMIN BANK,
MELE PATTAMBI, PALAKKAD-676 001.
11. K.SAJISH,
AZHINHILAM BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O AZHINHILAM, MALAPPURAM-676 117.
12. M.SREEMADHU,
MANIPPURAM BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O MANIPPURAM, KOZHIKODE, PIN-673 237.
13. BALACHANDRAN NAIR P.,
KONDOTTY BRANCH, SOUTH MALABAR GRAMIN BANK,
P.O KONDOTTY, MALAPPURAM, PIN-676 217.
14. PRASAD A.K.,
TIRUR BRANCH, SOUTH MALABAR GRAMIN BANK, P.O TIRUR,
MALAPPURAM, PIN-676 301.

R1 BY ADV. SRI.P.V.KUNHIKRISHNAN

R2,R3 BY ADVS. SRI.DEVAN RAMACHANDRAN, S.C

SRI.K.M.ANEESH

SRI.K.SANTHOSH KUMAR (KALIYANAM)

SRI.ADARSH KUMAR

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 23-11-2015,
ALONG WITH WA.NO.1702 OF 2015 AND CONNECTED CASES,
THE COURT ON 04-12-2015 DELIVERED THE FOLLOWING:

Msd.

**ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.**

**W.A. Nos.1539, 1540, 1541, 1542,
1616, 1668, 1702, 1705, 1735,
1818, 2100 & 2394 of 2015**

Dated this the 4th day of December 2015

J U D G M E N T

Ashok Bhushan, CJ.

All these writ appeals having been filed against the common judgment dated 20.5.2015 have been heard together and are being decided by this common judgment. These writ appeals can be divided into two sets. The first set of writ appeals have been filed by the South Malabar Gramin Bank and its General Manager, who were respondents to the writ petition, challenging the judgment dated 20.5.2015, by which, the learned Single Judge has set aside the list prepared by the Bank giving appointment to the Daily Wage Messengers.

2. The first set of writ appeal consists of only three appeals, namely; W.A.Nos.1702, 1705 and 1735 of 2015. The second set of writ appeal consists of the appeals filed by the selected candidates, whose names were included in the list of 112 candidates prepared by the Bank. W.A.Nos.1539, 1616, 1668 and 1818 of 2015 are the appeals filed by the selected candidates, who were impleaded as additional respondents. W.A.Nos.1540, 1541,

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1542, 2100 and 2394 of 2015 are the appeals filed by the appellants, who were not parties to the writ petitions, by seeking leave of this Court. All the appeals arise out of three writ petitions, namely; W.P.(C) Nos.26042 of 2010, 18947 and 18949 of 2011. It shall be sufficient to refer to the facts and pleadings in W.A. No.1702 of 2015 for deciding all the appeals and the said writ appeal has been treated as the leading writ appeal.

3. Brief facts giving rise to the writ petitions need to be noted for deciding the issues raised in these appeals are as follows :- The South Malabar Gramin Bank is the regional rural bank constituted under the Regional Rural Banks' Act, 1976. The Canara Bank is the sponsor bank. The bank had been engaging daily wage messengers in its 235 branches spread all over the State. The daily wage workers working as Messengers in the Bank were continuing for large number of years. The South Malabar Gramin Bank Employees' Union represented before the Management for regularising services of daily wage messengers. The Bank issued a notification dated 27.3.2008 (Ext.P1 in W.P.(C) No.26042 of 2010) inviting application for 111 posts of Full Time Messenger and one post of Diver-cum-Messenger. The said notification provided relaxation of age for SC/ST, OBC and

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Physically Handicapped persons. The said notification also provided relaxation in the case of candidates who have work experience in the relevant field in South Malabar Gramin Bank. In the said notification, 13 posts were reserved for SC category candidates, one post for ST candidate, 30 posts for OBC candidates, 3 posts for Ex-Servicemen and 3 posts for Physically Handicapped candidates. Exemption has been given to those candidates, who have work experience in the relevant field in South Malabar Gramin Bank from having a valid employment exchange registration. All the petitioners as well as the respondents to the writ petitions and other candidates submitted their applications in pursuance to the said notification. The candidates were subjected to an interview. The Bank, after the interview, published a list of 112 candidates against the aforesaid vacancies. W.P.(C) No.15027 of 2008 and other writ petitions were filed challenging the list of 112 candidates published by the Bank. The learned Single Judge, by common judgment dated 11.8.2009 allowed the said writ petitions by setting aside the select list of 112 candidates (Ext.P9 in the writ petitions). The candidates, who were selected and were included in the list of 112 candidates filed various writ appeals against the common

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judgment dated 11.8.2009. W.A.No.2123 of 2009 and other writ appeals filed against the said judgment were disposed of by the Division Bench by setting aside the judgment of the learned Single Judge, by which, the learned Single Judge quashed the select list of 112 candidates prepared by the Bank. The Division Bench, however, observed that the Bank shall examine whether all persons included in Ext.P9 are eligible for regularisation, as held by the Apex Court in paragraph 53 of the judgment in **The Secretary, State of Karnataka & others v. Umadevi & others** [2006 (4) SCC 1]. The Division Bench further observed that the management shall have the freedom to consider the case of members of SC/ST, physically handicapped persons and Ex-servicemen separately. The petitioners were also given liberty to bring to the notice of the management regarding the non-inclusion of eligible persons and inclusion of ineligible persons. The Division Bench disposed of the writ appeals by judgment dated 29.1.2010. After the said judgment, the Bank proceeded to re-examine the list of 112 candidates. The Bank was directed to complete the exercise within four months from the date of receipt/production of the certified copy of the judgment. Certified copy of the judgment dated 29.1.2010 was submitted before the

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Bank on 19.2.2010 and the Bank had to complete the exercise by 18.6.2010. The petitioners in W.P.(C) No.18949 of 2011 submitted their representations on 18.6.2010 and 21.6.2010 claiming their inclusion in the select list. Similarly, the petitioner in W.P.(C) No.18947 of 2011 had submitted his representation on 17.6.2010 for inclusion of his name. The petitioner in W.P.(C) No.26042 of 2010 submitted his representation on 9.6.2010 for inclusion of his name. The Bank, vide its letter dated 24.6.2010 communicated to the petitioners that the Bank had examined the cases of all the candidates, who were included in the select list and the claim of the petitioners for inclusion of their names was found untenable. The petitioners were communicated the reasons for non-inclusion of their names in the select list. Aggrieved by the decision taken by the Bank in June, 2010 rejecting the claim of the petitioners, three writ petitions were filed. It is useful to note few details of the aforesaid three writ petitions.

W.P.(C) No.18949 of 2011

This writ petition was filed by three petitioners, namely; Sri.K.V.Sreenivasan, Sri.A.K.Jayadevan and Sri.V.R.Santhosh seeking for the following reliefs :-

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- "i. call for the records relating to Exhibits P1 to P14;
- ii. issue a writ of certiorari or any other appropriate writ or order to quash Exhibits P6, P7 and P8 orders;
- iii. call for the entire records and the proceedings initiated in pursuance of Exhibit P5 judgment and consequential order passed based on it and issue a writ of certiorari to quash the same;
- iv. issue a writ of mandamus or any other appropriate writ directing the respondent No.1 to furnish the orders/proceedings passed and the list prepared in pursuance of Exhibit P5 judgment as requested for to the petitioners;
- v. issue a writ of mandamus or any other appropriate writ or order directing the respondent No.1 to appoint the petitioners to the post of full time Messengers (Office attendant) without any further delay."

The petitioners were claiming to be the members of Scheduled Caste. The petitioners claim that they were engaged on daily wage basis with effect from 13.11.2000, 2.11.2000 and 21.5.2001. They claim that their names were entitled to be included in the select list. It was submitted that several persons, who have not even completed 10 years of service as daily wage worker have been included in the select list of 112 persons. It was pleaded that the Bank had approved the earlier list without any change. The petitioners claim that they were also entitled to be regularised against the post of Full Time Messenger and the Bank committed error in rejecting their claim.

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W.P.(C) No.18947 of 2011

This writ petition was filed by one Sri.K. Ramachandran seeking for the following reliefs :-

- "i. call for the records relating to Exhibits P2 to P4;
- ii. issue a writ of certiorari or any other appropriate writ or order to quash Exhibit P2 order;
- iii. call for the entire records and the proceedings initiated in pursuance of Exhibit P1 judgment and the consequential order passed based on it and issue a writ of certiorari to quash the same;
- iv. issue a writ of mandamus or any other appropriate writ directing the respondent No.1 to furnish the orders/proceedings passed and the list prepared in pursuance of Exhibit P1 judgment to the petitioner;
- v. issue a writ of mandamus or any other appropriate writ or order directing the respondent No.1 to appoint the petitioner to the post of Full Time Messengers (Office attendant) without any further delay."

The petitioner claimed to be engaged on 1.4.1993 as daily wage worker. The petitioner had also filed W.P.(C) No.14333 of 2009 challenging the earlier list of 112 candidates, which writ petition was allowed, however, against the said judgment of the learned Single Judge, W.A.No.2122 of 2009 was filed by the respondent Bank, which was decided by a common judgment dated 29.1.2010. The petitioner alleged that several persons, who were arrayed as respondents to the writ petition were less qualified than the

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petitioner and they have been included in the select list of 112 candidates.

W.P.(C) No.26042 of 2010

This writ petition was filed by one Sri.C.Viswanathan seeking for the following reliefs :-

- “a) call for the entire records which lead to Exhibit P7 and issue a Writ of Certiorari quashing Exhibit P-7.
- b) Call for the entire records and proceedings initiated based on Exhibit P-5 judgment and the consequential order passed based on it and issue a Writ of Certiorari quashing the same.
- c) Issue a Writ of Mandamus Order or Direction directing the respondents to appoint the petitioner as full time messenger.”

The petitioner claimed to be engaged from 1992 on daily wage basis. He also claimed that he had worked for one day on 5.4.2008, which has not been considered by the Bank. After the judgment of the Division Bench dated 29.1.2010, the petitioner has sent a representation claiming inclusion of his name in the select list of 112 candidates, which has been rejected. A communication has also been sent by the Bank to the petitioner with regard to the same.

4. The Bank had filed counter affidavit in all the writ petitions. In the counter affidavit, it is stated that after the

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judgment of the Division Bench dated 29.1.2010, the Bank had re-examined the details of those who were included in the list of 112 persons as well as the details submitted by the petitioners. The Bank had also filed two affidavits in W.P.(C) No.26042 of 2010. By Annexure A to the affidavit dated 31.4.2013, the list of 112 candidates giving their names, category (OBC/SC/ST) and date of first engagement were given. In Annexure B, the details of all the candidates, who were working in the last 10 years ending by 2007 were given. In the list submitted, Sl.No.1 to 105 were general category candidates and from Sl.No.106 to 112, candidates of SC, Ex-Servicemen and Physically Handicapped persons were included.

5. With regard to petitioners in W.P.(C) No.18949 of 2011, by letter dated 24.6.2010, the Bank had communicated to the petitioners that they have not completed 10 years of service and hence, they were not eligible to be included in the select list. With regard to the petitioner in W.P.(C) No.18947 of 2011, by letter dated 24.6.2010, it was communicated that since the petitioner had voluntarily abandoned the work after December 2006, he has not been included in the list. With regard to the petitioner in W.P.(C) No.26042 of 2010, it has been mentioned in the

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communication letter dated 24.6.2010 that since the petitioner had voluntarily abandoned the work of the Bank after 2004-'05, he was not eligible for inclusion in the select list.

6. The learned Single Judge, by the impugned judgment dated 20.5.2015, after noticing the submission of the petitioners that certain candidates have not worked for sufficient time during the relevant period, observed that Annexure B, which was produced by the Bank itself would reveal that persons, who were not qualified are included in the select list. The learned Single Judge took the view that since the list prepared by the Bank is not in compliance with the judgment of the Apex Court in **Umadevi's case** (cited supra), the select list prepared by the Bank was quashed. It is useful to quote paragraph 8 of the judgment of the learned Single Judge dated 20.5.2015 and the directions given thereunder, which are to the following effect :-

"8. As Annexure B, which was produced by the respondent bank, itself would reveal that the persons, who are not qualified, are included in the select list, I have no hesitation to hold that the allegation projected by the petitioners in the writ petitions are true. Therefore, this Court is of the definite view that the matter requires a re-look by the respondent bank.

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In the result, the writ petitions are disposed
of as under;

- * The list prepared and the consequential orders passed pursuant to the judgment of this Court in WA No.2122/2009 & connected cases are quashed since the list/orders passed by the 1st respondent are not in compliance with the judgment in the aforesaid writ appeals.
- * The respondent bank is directed to reconsider the case of the petitioners in the writ petitions for appointment to the post of Full Time Messenger/Office Attendant within a period of three months from the date of receipt of a copy of this judgment.
- * Needless to say that the case of each applicant shall be considered separately to ascertain whether he/she would come within the ambit of para 53 of **Umadevi**'s case (see supra)."

All the writ appeals have been filed against the aforesaid judgment of the learned Single Judge dated 20.5.2015.

7. We have heard Sri.Devan Ramachandran, the learned counsel appearing for the appellants, the South Malabar Gramin Bank, in the first set of writ appeals. We have heard the learned counsel for the appellants, the selected candidates, in the second set of writ appeals. We have also heard Sri.T.M.Chandran and Sri.P.V.Kunhikrishnan, the learned counsel for the writ petitioners.

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8. Learned counsel for the appellants, challenging the judgment of the learned Single Judge, contended that all those candidates, who were included in the select list were duly selected after verification of all records. It is contended that except the candidates belonging to SC and Physically Handicapped candidates, all other candidates have completed 10 years of daily wage service and hence, they were rightly included in the select list. It is contended that petitioners in W.P.(C) No.18949 of 2011, who are also SC category candidates, could not be included in the select list. The Bank had decided to consider regularisation of candidates, who were engaged on daily wage basis during the period 1984-1999. The Division Bench had also directed to consider the cases of SC/ST and Physically handicapped on separate yardstick. The petitioners in W.P.(C) Nos.18947 of 2011 and 26042 of 2010 were the candidates, who had voluntarily left their employment and hence, their names were not included in the select list. There was no error in consideration by the Bank, which requires any interference by the learned Single Judge in exercise of writ jurisdiction under Article 226 of the Constitution of India.

9. Learned counsel for the writ petitioners, refuting the submission of the learned counsel for the appellants, contended

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that the writ petitioners were better qualified than the candidates, who were included in the select list. It is contended that several candidates, whose names were included in the select list were the candidates, who had not completed 10 years of working on daily wage basis and further, there were gaps in the working of the petitioners, which is apparent from Annexure B brought along with the affidavit filed by the Bank. The candidates, whose names were included at Sl.Nos.108, 109, 110, 111 and 112 are the candidates, who had not completed 10 years of working as daily wage worker, which is apparent from Annexure B and hence, their inclusion is illegal. Referring to the judgment of the learned Single Judge, it is further contended that several candidates, whose names were included, there were gaps in their working of 10 years' period, which disentitled them from inclusion in the select list.

10. We have considered the submissions of the learned counsel for the parties and perused the records.

11. The exercise for regularising daily wage messengers in the Bank after issuance of notification for recruitment for 111 posts of Messengers and one post of Driver-cum-Messenger was undertaken in pursuance of the directions of the Apex Court in

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paragraph 53 of the judgment in **The Secretary, State of Karnataka & others v. Umadevi & others** [2006 (4) SCC 1].

Paragraph 53 of the said judgment is stated as below :-

“**53.** One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in **State of Mysore v. S.V.Narayanappa** (AIR 1967 SC 1071), **R.N.Nanjundappa v. T.Thimmiah** [(1972) 1 SCC 409] and **B.N.Nagarajan v. State of Karnataka** [(1979) 4 SCC 507] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that

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regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

12. The Bank, taking into consideration the representations of the Employees' Union and directions in the judgment of the Supreme Court, proceeded to examine the details of the daily wage workers working in different branches of the Bank. A list of 112 daily wage workers, whom the Bank offered regular appointment, was published in the year 2008. Writ petitions were filed challenging the aforesaid list of 112 candidates, which writ petitions were allowed by the learned Single Judge vide judgment dated 11.8.2009 by setting aside the list of 112 candidates. However, no relief was granted to the writ petitioners, who had challenged the aforesaid select list. W.A.No.2123 of 2009 and connected appeals were filed by the Bank as well as the selected candidates challenging the judgment of the learned Single Judge dated 11.8.2009. The writ appeals were allowed by the Division Bench vide judgment dated 29.1.2010. The appellate Bench has

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noted the case of the Bank in paragraph 2 of the judgment, which is extracted below :-

“2. The Bank filed a counter affidavit, supporting Ext.P9. According to it, the persons who were engaged on daily wage basis between 1984 and 1999 were considered for selection, which was strictly made based on certain parameters fixed by the Bank. The allegations of favouritism and malafides were denied. The learned Single Judge, upon hearing the petitioners, found that the recruitment was made in violation of the provisions of the Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1988 (hereinafter referred to as “the Rules”). As per the Rules, the method of appointment is by direct recruitment. In this case, there was no open invitation of applications by publishing notification in the newspapers. Further, the notification provided for relaxation of age as also educational qualification. It also provided for waiving the requirement of registration with the Employment Exchange. The learned Judge took the view that in the absence of any provision in the Rules enabling such relaxation, the notification, which was issued preceding the selection, itself was illegal. Therefore, the learned Judge held the entire selection bad and nullified the select list (Ext.P9). The learned Judge also ordered to make fresh selection in accordance with law. Feeling aggrieved by the said judgment, the 10th respondent in the Writ Petition, who was one of the selected candidates, has preferred this appeal. The

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connected appeals are filed by the Bank and the other persons included in the rank-list, who were, in fact, appointed on regular basis and working for quite some time.”

After hearing the learned counsel for the parties, the Division Bench held that the selectees included in the list have more than 10 years' of service and the Management is taking steps to regularise them. The same cannot be termed as illegal or unauthorised. It is useful to quote the observations made by the Division Bench in paragraphs 6, 7 and 8 in the said judgment, which are to the following effect :-

“6. We considered the rival submissions made at the Bar and also perused the materials on record. We are of the view that unless the direction in paragraph 53 of the decision of the Apex Court in **Umadevi's** case (supra) applies, it is difficult to interfere with the decision of the learned Single Judge. In paragraph 53, the Apex Court held in **Umadevi's** case (supra) as follows :-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in **State of Mysore v. S.V.Narayanappa** (AIR 1967 SC 1071), **R.N.Nanjundappa v. T.Thimmiah** [(1972) 1 SCC 409] and **B.N.Nagarajan v. State of Karnataka** [(1979) 4 SCC 507] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years

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or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

If the selectees involved in this case have more than 10 years' service on daily wage basis, we are of the view that, if the management takes steps to regularise them, the same cannot be termed as illegal or unauthorised, on the ground that the process adopted runs counter to the procedure for direct recruitment in the relevant recruitment rules. The directions issued by the Apex Court in **Umadevi's** case (supra) will definitely save regularisation of persons working on daily wage basis for more than 10 years, as a one-time measure.

7. In this case, the learned Standing counsel for the Bank submitted that almost all the persons, who

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are included in Ext.P9, have more than 10 years' service and therefore, there is nothing illegal or irregular about the selection. A few persons who come under the SC/ST, physically challenged and Ex-servicemen quotas alone are having lesser service.

8. In view of the above factual position, we think, the selection should be saved, though the same runs counter to the recruitment rules. But, of course, the management has to examine the individual grievances regarding omission to include eligible persons and wrongful inclusion of ineligible persons."

It is relevant to note that the judgment of the learned Single Judge setting aside the select list was set aside by the Division Bench. However, the Bank was directed to re-examine the cases of those candidates included in the select list and if anybody, who was included in the list was not found eligible, the Bank was to put the concerned incumbent on notice, hear him and take a decision. The Bank was also directed to consider the case of non-inclusion of eligible candidates also.

13. Pursuant to the judgment of the Division Bench dated 29.1.2010, a fresh exercise was conducted by the Bank and a list of 112 persons was again published. The cases of the five petitioners, who had filed three writ petitions as noted above, were considered and their claims were rejected on the ground

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indicated in the letters dated 24.6.2010 issued to them, which shall be noted by us, little later. The petitioners have come up praying for inclusion of their names in the select list. The Bank had rejected their claims, justifying their non-inclusion.

14. We shall first advert on the question as to whether the petitioners were entitled to be included in the select list of 112 persons and their non-inclusion was unjustified. For answering the aforesaid question, we revert to the cases of all the petitioners in the writ petitions and the stand of the Bank with regard to them as is clear from the pleadings on record.

W.P.(C) No.18949 of 2011

This writ petition was filed by three petitioners, who claimed to be the members of SC. They claimed their initial engagement on daily wage basis with effect from 13.11.2000, 2.11.2000 and 21.5.2001. The petitioners had filed their details of engagement as Exts.P1, P2 and P3. In Ext.P1, a copy of the details of the first petitioner, his date of engagement was indicated as 13.11.2000. In Ext.P2, a copy of the details of the 2nd petitioner, his date of engagement was indicated as 2.11.2000 and in Ext.P3, the details of the 3rd petitioner, the date of engagement was indicated as 21.5.2001 and hence, all these petitioners had not completed 10

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years' of service by 30.6.2007, which was the date taken by the Bank for consideration and even if the date when this Court issued directions (29.1.2010) is taken into consideration, then also the writ petitioners had not completed 10 years' of service. All the petitioners were sent communication by the Bank on 24.6.2010, which was filed as Exts.P6 to P8. It is sufficient to note the reasons given by the Bank for rejection of the claims of the petitioners. With regard to the first petitioner, the following was stated :-

**“Sub: Judgment in W.A.No.2272/2009 and
connected cases.
Ref: Your letter Dt. 15.06.2010.**

The Hon'ble Court had vide judgment above, directed us to examine whether all the persons included in Exhibit P9 in WP(C) 15027/2008 are eligible for appointment as per the criterion fixed by the Hon'ble Supreme Court in Umadevi's case.

The Hon'ble Court had directed us to complete this exercise within 4 months from the date of receipt of the Certified Copy of the judgment. We received the Certified Copy from the Hon'ble Court on 19.02.2010 and hence had to mandatorily complete the exercise by 18.06.2010.

We have received your above representations only on 18.06.2010. You will appreciate that your representation has reached us only at the last moment within which we have already completed the exercise as directed by the Hon'ble Court.

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Your case, even though we had not received your representation, had been examined in detail, at the time when we had examined the eligibility of the candidates.

You have claimed in your representation that you entered service on 13.12.2000 in the Kuriachira branch. It is therefore obvious that you have not completed ten years of service, even assuming without admitting, that you have been employed from 13.12.2000 as claimed by you either as on date of exhibit P9 or that of the judgment of the Hon'ble Court.

Your claim for appointment is, therefore, not within the criterion fixed by the Hon'ble Supreme Court in Umadevi's case. Your claim was, therefore, rejected by the Bank."

Similar communication was sent to petitioners 2 and 3.

Admittedly, the petitioners have not completed 10 years of working on daily wage basis. The submission, which is pressed by the petitioners is that there are several other candidates, who had not completed 10 years. They have given reference to candidates at Sl.Nos.108, 109, 110, 111 and 112 as mentioned in Annexure B.

The details of which are given as under :-

[illegible]

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[illegible][illegible]

Sl.No	111	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Name	Sobhana A	0	0	72	143	148	151	135	152	147	145
Cate- gory	PHC										
Date of engag ement	10/13/ 2000										

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Sl.No	112	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Name	Prasad AK	0	11	14	18	32	16	41	33	9	27
Cate- gory	SC										
Date of engag ement	05/31/99										

15. From the above it is clear that the working of the candidates at Sl.Nos.108 - 112 is about 9 years since against 1998, their working has been mentioned as 'zero'. It is, however, relevant to note that candidate at Sl.No.108 is 'SC', 109 is 'Ex-Servicemen', 110 is 'OBC/PHC', 111 is 'Physically Handicapped' and 112 is 'SC'. The Division Bench, while deciding W.A.No.2123 of 2009 and connected appeals issued the following directions in the case of SC/ST, Physically Handicapped and Ex-Servicemen candidates :-

“..... The management shall have the freedom to consider the case of members of the SC/ST, physically handicapped persons and Ex-servicemen separately.”

As noted above, in the notification issued by the Bank, 13 posts were reserved for SC category, one post for ST category, 30 posts for OBC, 3 posts for Ex-Servicemen and 3 posts for Physically Handicapped categories. The candidate mentioned at Sl.No.109

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was Ex-Serviceman, candidate at 110 was OBC/PHC, candidate at 111 was Physically Handicapped. The petitioners cannot plead inclusion against the candidates belonging to Physically handicapped or Ex-Servicemen. The candidates at Sl.Nos.108 and 112 are only two SC category candidates, who have not completed 10 years of service since their working in 1998 is shown as 'zero'. However, it is relevant to note that the initial engagement of candidate at Sl.No.107 was 28.9.1998, Sl.No.108 is 20.5.1999 and Sl.No.112 is 31.5.1999. All these candidates, who were included in the select list were engaged from 1999 onwards, whereas, the petitioners were engaged in the year 2000-2001. The SC candidates, who had completed only 9 years' service and included in the select list were engaged much prior to the petitioners' engagement. Thus, we do not find any error in the inclusion of the aforesaid SC candidates in preference to the petitioners. As noted above, for SC/ST candidates, the Management had been given freedom to apply a separate criterion and hence, the bank had taken a decision to regularise the SC candidates, who were engaged much earlier to the petitioners. In view of the above, there was no case for exercising jurisdiction under Article 226 of the Constitution of India to interfere with the action of the

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bank regularising the aforesaid candidates on the aforesaid ground.

W.P.(C) No.18947 of 2011

This writ petition was filed by one Sri.K.Ramachandran, who claims that his engagement was with effect from 1.4.1993. The petitioner's claim was rejected by the Bank on the ground that the petitioner had voluntarily abandoned the work after December, 2006. The following communication dated 24.6.2010 was issued by the Bank to the petitioner :-

“xx xx xx

You have alleged in your representation that you have worked as FTM in Chalikkara branch from 1988 till 2009. Even assuming without admitting that you were employed from 1988 as claimed by you, our records reveal that after December 2006, you have voluntarily abandoned the work and the Bank has information that you were employed some where else. Your assertion that you worked till 2009 is totally baseless and stated by you merely to make a claim.

Your claim for appointment is, therefore, not within the criterion fixed by the Hon'ble Supreme Court in Umadevi's case. Your claim was, therefore, rejected by the Bank.”

The petitioner in the writ petition has not filed any material to indicate that after December 2006 he has worked in the Bank as daily wage worker. From the details brought on record by the Bank, especially, Annexure B as noted above, it is clear that the

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Bank had been considering the working upto the year 2007 since the Bank had issued notification inviting application in the year 2008. The petitioner has not brought anything on record to indicate that after December 2006, he had worked in the Bank. Hence, the non-inclusion of the petitioner in the select list cannot be said to be without a valid cause.

W.P.(C) No.26042 of 2010

The petitioner, Sri.C.Viswanathan, claims to be working on daily wage basis since 1992. The petitioner had mentioned his working as daily wage employee in Kakkoor Branch from 1992 onwards. The petitioner's claim was rejected vide communication dated 24.6.2010, wherein, the following was stated by the Bank :-

“xx xx xx

You have alleged in your representation that you have worked as FTM in Kakkur branch from 1992 till 2008. Even assuming without admitting that you were employed from 1992 as claimed by you, our records reveal that after 2004-05, you have voluntarily abandoned the work and the Bank has information that you were employed some where else. Your assertion that you worked one day in 2008 is totally baseless as stated by you merely to make a claim.

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Your claim for appointment is, therefore, not within the criterion fixed by the Hon'ble Supreme Court in Umadevi's case. Your claim was, therefore, rejected by the Bank."

The Bank has, in its communication stated that after 2004-'05, the petitioner had voluntarily abandoned the work. Hence, the Bank had rejected the claim of the petitioner. The petitioner claimed that he had worked for one day on 5th April, 2008. That was also cancelled in April, 2008. The petitioner, in the writ petition, had brought certain additional materials, Exts.P10 to P12, which are the details of subscribers annual statement of account for the years 2004-2005, 2005-2006 and 2006-2007. In Ext.P10 statement of account, both employer's and employee's contributions were mentioned. In Ext.P11 statement of account, employee's contribution was mentioned as 'zero'. Thus, it is clear that there is no material to indicate that after 2004-2005 the petitioner continued in the Bank. One day payment of salary is sought to be proved by voucher dated 5.4.2008. The Bank has brought on record the details to indicate that the aforesaid entry of one day dated 5.4.2008 was cancelled by the Bank, which is clear from the pleadings on record. Ext.P14 letter dated 1.2.2011 issued by the Regional PF Commissioner to the petitioner also

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indicated the details of PF contribution details of the petitioner from 1993-94 to 2004-05, which also proved the case of the Bank that no Provident Fund amount was deposited after 2004-05. The Bank's categoric case was that the petitioner had voluntarily abandoned the work after 2004-05 and since there was no material brought on record by the petitioner that he has worked after 2004-05, the non-inclusion of the petitioner was fully justified. It is further relevant to note that with regard to the petitioner, Sri.C.Viswanathan, it has been pleaded in the counter affidavit filed by K. Hariharan, General Manager of the Bank, the said affidavit has been filed by him in obedience to the direction of this Court on 27.5.2013, that in place of the petitioner, his wife was engaged as daily wage employee and she is still continuing there.

16. From the above discussion, we conclude that the non-inclusion of the petitioners in the above three writ petitions were on valid reasons and the petitioners have failed to make out a case for issuing a direction to include them in the select list.

17. The last submission, which need to be considered is that several candidates, who were not eligible have been included in the select list. The learned Single Judge also in paragraph 8 of the judgment as noted above observed that Annexure B itself would

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reveal that the persons who have not qualified are included in the select list. It appears that the said observation made by the learned Single Judge is with regard to those candidates, who have not completed 10 years of working on daily wage basis.

18. We have examined Annexure B. With regard to candidates from Sl.Nos.1 to 105, they were all general category candidates and they had all completed 10 years of working because their working period from 1998-2007 have been mentioned therein. Only the candidates from Sl.Nos.108 to 112 could be said to have completed 9 years' of service because their working period in the year 1998 was shown as 'zero'. The above five candidates were included in the category of two SC, two Physically handicapped and one Ex-Serviceman. With regard to SC, Physically handicapped and Ex-Servicemen, the Bank had been granted liberty by the Division Bench vide its judgment dated 29.1.2010 to apply a separate criteria. Even though they have not completed 10 years of working, they have been selected by the Bank against reserved vacancies for which, the Bank was permitted to adopt a separate criteria. More so, two SC category candidates, who were included at Sl.No.108 and 112, who had completed only 9 years' of working, their date of engagement was

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shown as 20.5.1999 and 31.5.1999, whereas, the date of engagement of the three petitioners, who were SC category candidates in W.P.(C) No.18949 of 2011 are 13.11.2000, 2.11.2000 and 21.5.2001. Thus, the petitioners have been engaged after one year from the candidates at Sl.Nos.108 and 112. No error could be found in the inclusion of aforesaid two candidates.

19. One more observation has been made by the learned Single Judge in paragraph 7 of the judgment. The candidates mentioned therein have not worked in the Bank for sufficient time during the relevant period. Certain names have been referred to in Annexure B like, candidates 6, 12, 16, 17, 18, 20 and few others. With regard to candidate No.6, it is clear that he has not worked for two years during the relevant period of 10 years. Candidate at Sl.No.12 has not worked in one year during the period of consideration. Similarly, Sl.No.16 has not worked for one year during the period of consideration. With regard to category No.18, he has worked only few days in 1998 and 1999.

20. It was for the Bank to take a decision to condone non-working days during one or two years out of the total period of consideration of 10 years. No such decision of the Bank has been referred to or brought on record, which indicates in event, a daily

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wage employee has not worked for one year or two years during the period of consideration, his name should have been excluded from the select list. It was the Bank's decision to fix a criterion for absorption of daily wage employee in view of the observation and directions of the Supreme Court in **Umadevi's** case (cited supra) and no such criterion has been referred to or brought on record to the effect that those, who had not worked during one year or two years during the period of consideration were not to be included. More so, from writ petitions filed giving rise to these writ appeals, it was clear that only five candidates, whose details have been mentioned above were aggrieved by the select list of 112 persons, who were regularised as Messenger/Driver-cum-Messenger in the Bank. The cases of the five petitioners were examined in detail and we have already held that their non-inclusion was on valid reasons. We do not find any ground on the basis of which, the select list can be set aside by the learned Single Judge. The Bank had, as per the judgment of the Division Bench dated 29.1.2010, already re-examined the details and taken a decision. Since the Bank had already re-examined the matter and issued a new select list, the details of which are given in Annexure B, there is no

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occasion for issuing a direction for fresh examination of the details, as directed by the learned Single Judge.

In view of the foregoing discussions, we are of the view that the judgment of the learned Single Judge cannot be sustained. All the writ appeals are allowed. The judgment of the learned Single Judge dated 20.5.2015 is set aside. W.P.(C) Nos.26042 of 2010, 18947 of 2011 and 18949 of 2011 are dismissed. The parties shall bear their costs.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

//True copy//

P.A. To Judge

Jvt/2.12.2015.