

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WA.No. 1987 of 2015 IN WP(C).1414/2015

AGAINST THE JUDGMENT IN WP(C) 1414/2015 DATED 05-06-2015

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APPELLANTS/RESPONDENTS :

1. THE REGIONAL MANAGER, BANK OF BARODA
REGIONAL OFFICE, VASUDEVA BUILDING, T.D.ROAD
ERNAKULAM, KOCHI-682011.
2. THE BRANCH MANAGER
BANK OF BARODA (VADAKKANCHERY) BRANCH, 1ST FLOOR
MANNARKKUDY BUILDING, TRICHUR ROAD, PALAKKAD-678683.

BY ADVS.SRI.DEVAN RAMACHANDRAN(SR.)
SRI.ADARSH KUMAR

RESPONDENT/PETITIONER :

SOBHA K., AGED 37 YEARS
W/O. JAYAPRAKASH, GOURI SANKARAM, KIZHAZKKANCHERRY
PALAKKAD-678684.

BY ADV. SRI.SIVAN MADATHIL
SMT.P.USHAKUMARI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 08-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No. 1987 OF 2015

Dated this the 8th day of December, 2015

JUDGMENT

Shaffique, J.

The respondents in W.P.(C) No. 1414 of 2015 has filed this appeal challenging judgment dated 05.06.2015 of the learned Single Judge.

2. The respondent herein has filed the writ petition seeking regularisation of her service on the basis of settlement dated 24.03.2008 which was produced as Ext.P5. As per the settlement, casual/temporary Peons/Sweepers who had worked for 240 days or more in consecutive 12 months between 01.01.1991 and 29.02.1996 and who are still working are directed to be absorbed during the financial year 2009-10.

3. The petitioner contended that she was also entitled for the said benefit as she had worked for more than 240 days during the year 2001-02 in the respondent/appellant Bank. But despite her repeated requests, no action was taken by the Bank to regularise her in service and hence the writ petition.

4. Counter affidavit has been filed by the Bank *inter alia* contending that the petitioner had not completed 240 days in an year and that apart the writ petition cannot be entertained as there was delay and laches on the part of the writ petitioner.

5. The learned Single Judge after considering the matter on merits allowed the writ petition and issued the following directions:

- "1. The petitioner is entitled for absorption in regular service.
2. The petitioner shall be regularised in the post of sweeper within a period of three months.
3. The petitioner shall be suitably placed in any of the branches near to Vadakkencherry.
4. If there are no vacancies, the petitioner shall be absorbed as a super numerary and shall be paid salary payable to the sweeper after three months."

6. Impugning the aforesaid judgment this appeal has been filed *inter alia* contending that the petitioner ought to have claimed the benefit of settlement during 2009-10 itself and hence the learned Single Judge was not justified in entertaining the writ petition.

7. In the impugned judgment learned Single Judge has referred to various judgments of Supreme Court especially **Tukaram Kana Joshi and others through Power of Attorney Holder v. Maharashtra Industrial Development Corporation and others** [(2013) 1 SCC 353] and other judgments to counter the arguments of the appellant Bank. Further it is relevant to note that the petitioner was only a Sweeper working in the office and admittedly she has been working in the said office as Sweeper on daily wage basis up to 2010.

8. Learned counsel for the appellant Bank submits that the writ petition ought to have dismissed on the ground of delay and laches. In fact it is the obligation of the Bank to prove that she has not worked for 240 days during the relevant time. That apart it was the obligation of the Bank to inform her about the rights immediately after the settlement which has not been done by the Bank. The Bank should have either allowed or disallowed her right to continue in employment

9. As far as the merits of the contentions is concerned, the only question is whether she had worked in the

establishment continuously for 240 days or more in an year. Learned Single Judge referred to Ext.P3 and had come to a conclusion that the petitioner had worked for 240 days in an year. Though it was argued that the petitioner had not worked for 240 days in an year, no material is produced by the Bank to substantiate their contention. Learned Single Judge had given sufficient opportunity to justify their contention regarding the application of settlement as far as the petitioner is concerned. By an interim order dated 13.10.2015 we have directed the Bank to bring on record the details of monthly working days of the petitioner for the period from 07.04.2001 till 28.07.2007. Other than producing a communication dated 11.02.2010 sent by the Branch Manager to the Assistant General Manager, it is stated that the records are not available as the same has been destroyed. Despite giving sufficient opportunity since no materials were produced to confirm that the petitioner had not worked for 240 days in an year, we do not think that we should interfere with the finding of fact by the learned Single Judge in this aspect.

We do not find any ground to interfere with the judgment of learned Single Judge and hence the Writ Appeal is dismissed.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**