

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 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

WA.No. 2139 of 2015 IN OP.16856/2000

AGAINST THE JUDGMENT IN OP 16856/2000 DATED 24-06-2015

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APPELLANTS/(RESPONDENTS 1 & 2) :

1. THE MANAGING DIRECTOR, STATE BANK OF TRAVANCORE
HEAD OFFICE, POOJAPPURA, THIRUVANANTHAPURAM
PIN-695 012.
2. THE REGIONALMANAGER
STATE BANK OF TRAVANCORE, ZONAL OFFICE, ERNAKULAM.

BY ADV. SRI.P.RAMAKRISHNAN, SC, SBT

RESPONDENT/(PETITIONER) :

P.V.KUTTAPPA PANICKER
PADAMPARAMBIL HOUSE, ERUVALLIPARA, THIRUVALLA-689 101.

R1 BY ADV. SRI.S.SUBHASH CHAND

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No. 2139 OF 2015

Dated this the 1st day of December, 2015

JUDGMENT

Shaffique, J.

This appeal has been filed by respondents in O.P. No. 16856 of 2000 challenging the judgment dated 24.06.2015 by which the learned Single Judge has allowed the writ petition filed by the respondents herein, who hereinafter is referred to as the petitioner.

2. The writ petition is filed challenging Ext.P6 order and seeking for a direction to respondents/appellants to grant the benefits provided under Clause 20.8 of the 'First Bipartite Settlement' and consequent service benefits including pensionary benefits to the petitioner. The short facts involved in the writ petition would disclose that the petitioner was initially appointed in the State Bank of Travancore as a temporary employee and he was regularised in service as per Ext.P4 order dated 04.09.1965 with effect from 20.09.1965. He was on probation for a period of six months and thereafter

he was appointed to the post of regular Watchman on 20.03.1966.

3. In the mean time, the first Bipartite Settlement was executed between the management and workmen. Petitioner retired from service on 30.06.1997 on attaining the age of superannuation. After retirement he made a claim for computing his temporary service along with the total service in terms of Clause 20.8 of the settlement. By Ext.P6 order the Bank refused to consider the claim on the ground that Clause 20.8 of the first Bipartite Settlement will be available only to those temporary employees who were appointed after 01.01.1966 and eventually selected by the Bank. So far as the petitioner is concerned, he was selected prior to 01.01.1966 and hence the petitioner is not entitled for the said benefit.

4. Petitioner claims that despite the fact that the Bipartite Settlement has come into force on 01.01.1966, he is entitled to compute his temporary service as regular service and therefore he can avail the aforesaid provision.

5. Counter affidavit has been filed by the Bank supporting the stand taken in Ext.P6. Learned Single Judge after considering the matter observed that if there is any ambiguity in Clause 20.8, the same has to be resolved in favour of the workmen, therefore it was held that the benefit has to be given to the petitioner as well and accordingly the writ petition was allowed, directing the Bank to disburse all benefits including arrears to the petitioner after passing appropriate orders in that regard.

6. It is impugning the aforesaid judgment that this appeal has been filed by the Bank. Heard learned counsel for the Bank and learned counsel for the respondent/writ petitioner.

7. The short issue to be considered in this writ petition is as to whether Clause 20.8 of the Settlement applies to the facts and circumstances of the present case. The relevant provision reads as under :

"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.”

8. Admittedly this provision has come into force with effect from 01.01.1966, whereas the petitioner was regularised in service with effect from 20.09.1965. A bare reading of Clause 20.8 would indicate that the benefit is available only to those temporary employees who is selected for filling up of vacancies in terms of the aforesaid provision. The words, “if such temporary workmen is eventually selected for filling the vacancy”, clarifies the said position. Such workmen, of course, are entitled to treat their temporary employment as part of probationary period. In so far as the selection of the petitioner is for filling up of a vacancy which has arisen and he was appointed prior to 01.01.1966, it is clear that the benefit of the aforesaid settlement cannot be claimed by the petitioner.

9. In so far as there is no ambiguity to the aforesaid clause, we do not think that the learned Single Judge was justified in observing that the clause has to be interpreted in

favour of the workmen. Interpretation of relevant provision in the settlement arises only if there is any ambiguity or if there is any doubt regarding the settlement. In so far as there is no doubt regarding the settlement, we are of the view that learned Single Judge was not justified in granting the relief sought for.

10. In fact the petitioner has filed O.P. No. 8269 of 1989 which was dismissed by this Court as per judgment dated 16.11.1989. A reading of the above judgment would also indicate that the petitioner had claimed the benefit of clause 20.8 of the aforesaid settlement earlier. While dismissing the writ petition this Court observed that the writ petitioner is not entitled to claim the benefit of the agreement since he was appointed on probation with effect from 20.09.1965, which is prior to the relevant date, i.e., 01.01.1966. Under such circumstances even the writ petition is barred by the general principle of *res judicata* as the relief sought by the petitioner was already considered and rejected by this Court in O.P. No.8269 of 1989.

Hence the learned Single Judge was not justified in allowing the writ petition. For the reasons stated above, we allow

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the writ appeal and the judgment of learned Single Judge is set aside and the writ petition is dismissed.

**Ashok Bhushan,
Chief Justice.**

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

ttb/02/12