

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

WP(C).No. 1414 of 2015 (B)

PETITIONER(S):

**SOBHA K., AGED 37 YEARS
W/O. JAYAPRAKASH, GOURI SHANKARAM,
KIZHAKKANCHERRY,
PALAKKAD-678 684.**

BY ADV. SMT.P.USHAKUMARI

RESPONDENT(S):

- 1. THE REGIONAL MANAGER, BANK OF BARODA,
BANK OF BARODA, REGIONAL OFFICE, VASUDEVA BUILDING,
T.D.ROAD, ERNAKULAM, KOCHI-682 011.**
- 2. THE BRANCH MANAGER,
BANK OF BARODA, (VADAKKENCHERRY BRANCH), 1ST FLOOR,
MANNARKKUDY BUILDING, TRICHUR ROAD, PALAKKAD-678 683.**

**BY ADVS. SRI.DEVAN RAMACHANDRAN
SRI.K.M.ANEESH
SRI.ADARSH KUMAR
SRI.BIJU VARGHESE ABRAHAM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-03-2015
THE COURT ON 05-06-2015, DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 :** COPY OF THE DOCUMENT SHOWING THE DETAILS OF JOINING SERVICE OF THE PETITIONER AND THE NAMES OF THE PERSONS WRITTEN BY THE RESPONDENTS.
- P2 :** COPY OF THE SALARY SLIP GIVEN BY THE 2ND RESPONDENT IN THE NAME OF THE PETITIONER DTD.27.11.2010.
- P2(A) :** COPY OF THE SALARY SLIP GIVEN BY THE 2ND RESPONDENT IN THE NAME OF SATHYABHAMA, BUT TO THE PETITIONER, DTD.14.9.2013.
- P3 :** COPY OF THE DOCUMENT DTD.29.3.2003 SHOWING THE PERIOD OF ENGAGEMENT OF THE PETITIONER AND BY DIFFERENT NAMES WRITTEN BY THE RESPONDENT INSTEAD OF PETITIONER'S NAME.
- P4 :** COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DTD.10.12.2008.
- P5 :** COPY OF THE CIRCULAR NO.BCC.BR/100/76 DTD.24.3.2008 SHOWING THE DECISION TAKEN AS THAT OF PETITIONER'S CASE.
- P6 :** COPY OF THE FILLED UP ANNEXURE-A FORM.
- P7 :** COPY OF THE MATHRUBHOOMI THOZHIL VARTHA DTD.13.9.2014.
- P8 :** COPY OF THE REPRESENTATION SUBMITTED TO THE 1ST RESPONDENT THROUGH 2ND RESPONDENT DTD.10.12.2014.
- P9:** COPY OF THE FORMAT DATED 25/4/2003 SENT BY THE THEN BRANCH MANAGER TO THE THEN ASSISTANT GENERAL MANAGER
- P10:** CARBON COPY OF THE BIO-DATEA FILED BY THE BRANCH MANAGER.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.1414 of 2015

Dated this the 5th day of June, 2015

JUDGMENT

This writ petition is filed seeking to absorb and regularise the service of the petitioner in the post of Sweeper/Peon in any of the permanent vacancy in the Bank of Baroda.

2. The Management of the Bank of Baroda and their workmen represented by Union arrived at a settlement on 18.3.2008. This settlement was arrived at before the Deputy Chief Labour Commissioner (Central), Mumbai. By virtue of the terms of settlement, Casual/Temporary Peons/Sweepers, who have worked for 240 days or more in consecutive twelve months between 1.3.1996 and 28.7.2007 and who were working at the relevant time, was agreed to be absorbed in the service during the financial year 2009-2010. The petitioner's present claim falls within the above terms of the agreement.

3. The petitioner submits that she was engaged as a Part-time Sweeper since 2001. The petitioner relies on Ext.P3 letter of the Assistant General Manager to the Chief Manager indicating the

number of days of her engagement during the year 2001. This would indicate that the petitioner was engaged for 249 days. Ext.P9 also would indicate that this period was spread over to 2001-2002 (in 2001/190 days and in 2002/50 days). Thus, the petitioner submits that by virtue of the agreement, the petitioner is entitled to be absorbed in the service. There is no dispute that the petitioner worked in the Vadakkenchery branch of the Bank. This is seen from paragraph 11 of the counter affidavit filed on behalf of respondents 1 and 2.

4. The respondent Bank dispute the entitlement based on the settlement. It is the case of the respondents that they never had appointed the petitioner. It is their case that the entire exercise was completed during 2009-2010 and the petitioner never challenged the action till regular appointment has been made.

5. The respondents also filed an additional affidavit. They dispute the authenticity of the exhibits produced by the petitioner. It is also submitted that the petitioner never revealed how she came into possession of internal communications of the Bank.

6. The respondents appointed a regular appointee pursuant to the notification. According to the respondents, regular appointee has taken charge on 12.1.2015. The regular appointee is not impleaded in this writ petition. The regular appointee is now serving in the Vadakkenchery Branch.

7. The settlement clearly indicates that the Sweepers who have worked 240 days or more consecutively in twelve months are entitled for regularisation. Ext.P3 clearly indicates that the petitioner has worked for 249 days. Ext.P9 supplements the above and it shows that twelve months is spread over in 2011 and 2012. This court need not disbelieve a communication issued by the Bank Manager to the higher authorities. Certainly, above communications are in respect of the petitioner's service. These communications are not, any sort of protected communications. Therefore, the Manager or someone in the Bank might have given a copy on the request of the petitioner. It is to be noted that the petitioner is a SSLC failed person and normally such person would depend upon some others in the organisation in the matter of obtaining information from the organisation. The respondents also have no case that contents of

the letter are manipulated by the petitioner. If there exist any manipulation that can be easily verified and countered with the documents available with the Bank. The Bank definitely is in possession of the documents to show that remuneration was paid to the petitioner. None of the documents are produced before this Court to discredit the claim of the petitioner that the petitioner had not put 240 days consecutively for twelve months. In the absence of production of any documents by the Bank, which could have been produced by them to contradict the case of the petitioner, this Court need not disbelieve the case of the petitioner.

8. The petitioner has satisfied this Court that she had put 240 days service in consecutive twelve months. Therefore, she is entitled for absorption in terms of the memorandum of settlement.

9. Next question is regarding the delay in approaching this Court seeking regularisation. The case of the Bank is that the entire exercise of absorption was completed during 2009-2010. It is to be noted that the petitioner was disengaged when a regular appointee has taken over the post of Sweeper cum Peon in the Vadakkenchery branch on 12.1.2015. A Sweeper who failed in 10th

Std. can only hope against hope on the delay involved in absorption. At no point of time, there was any repudiation of petitioner's right. Even when rights are trampled, the ignorant and deprived think only to ensure his/her livelihood. In the country where, huge unemployment, desperate poverty and squalor pervades thought and mind, the right becomes secondary and the livelihood gets precedence. It is only when livelihood is affected, the right becomes primary giving cause of action to approach the Court. Certainly in this case, on immediately knowing that the appointments are being made to displace her, she has approached this Court on 14.1.2015.

10. The delay would frustrate the relief only when there are serious prejudice being caused to the respondents. and right of the third parties being affected. See the judgments of Hon'ble Supreme Court in **Tukaram Kana Joshi and Others through Power of Attorney Holder v. Maharashtra Industrial Development Corporation and Others** [(2013) 1 SCC 353], **P.S.Sadasivaswamy v. State of Tamil Nadu** [AIR 1974 SC 2271] and **H.D.Vora v. State of Maharashtra and Others** [AIR 1984 SC

866]. Therefore, the argument that the entire exercise for absorption was completed during 2009-2010 cannot be an excuse to deny the right vested to the petitioner by virtue of the memorandum of settlement.

11. It is admitted that one Nimisha was appointed as Sweeper-cum-Peon in the Vadakkanchery branch; she is not a party to the writ petition. In such circumstances, the petitioner cannot be given a regular appointment in Vadakkanchery branch. However, that will not preclude the respondents from appointing the petitioner in regular service in any of the branch nearby.

In that view of the matter, this writ petition is disposed with 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.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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