

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2017

PRONOUNCED ON: 30.01.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. No.14686 of 2003

and W.P.M.P.Nos.2681, 2682 of 2007

and WPMP No.207 of 2014

S.Viswanathan ... Petitioner

vs.

1.State Bank of India
rep by its Chairman
State Bank Bhavan
Madam Cama Road
Opp.Mantralaya
Mumbai 400 021.

2.The Circle Development Officer
State Bank of India LHO
Aparna Complex
College Lane
Chennai 600 006.

3.State Bank of India Staff
Federation, rep by its
General Secretary, State Bank Buildings
Main Branch Abidcornor
Hyderabad 500 195.

4.The Secretary to Government
of India, Ministry of Labour
New Delhi.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records pertaining to the impugned circular No.CIRDO/Per/109/ f the 26.3.2003 read with staff circular No.9 dated 22.6.1999 and consequential circular/order No.Cirdo/OP & SP/24/2002-03 dated 27.03.2003 and quash the same and

consequently direct the respondents that the issues relating to the basic terms and conditions of service structure have arisen due to recent developments like computerisation, economic environments changes and globalisation be referred to a tribunal to be constituted as was done in the case of earlier Awards.

For petitioner Mr.N.Seshadri
For R1 Mr.P.D.Audi Kesavalu
For R2 Mr.C.K.Chandrasekar
For R3 Mr.K.Tamilarasan
For R4 Mr.K.Raju, CGSC
For Matheswaran Mr.B.K.Singh

ORDER

This writ petition has been filed by a disgruntled employee of State Bank of India, who neither wants to shoulder responsibilities nor would stomach the progress of others in their career, challenging the circulars dated 22.06.1999, 26.03.2003 and 27.03.2003 issued by the Management of the State Bank of India.

2. The petitioner joined the State Bank of India as Clerk-cum-Cashier sometime in August 1980. Admittedly, there are broadly two categories of employees in the nationalised banking industry, viz., officers cadre and subordinate staff cadre, who are governed by Sastri Award and Desai Award. They are also called as "award staff". The petitioner belongs to the award staff category. The Management of the State Bank of India entered into a settlement with the All India State Bank of India Staff Federation on 12.04.1999 under Sections 2(p) and 18(1) of the Industrial Disputes Act, 1947 (for short "the ID Act"), under which, both the parties agreed to evolve a promotion policy and also progression scheme for the award staff, in view of the technological advancements especially in the Information Technology sector. Pursuant to this agreement, the Management issued a circular dated 22.06.1999 and followed it up with the circulars dated 26.03.2003 and 27.03.2003 giving additional duties and responsibilities to the award staff for providing efficient service to bank customers.

3. It may be apposite to extract certain paragraphs from the circulars dated 22.06.1999 and 26.03.2003 in order to highlight the nature of changes that the bank and the union were attempting to usher in for the progress of the banking industry:

"5. It may be observed from clause 6 of the Settlement that the Federation would extend full co-operation to the Bank, inter alia, in the following areas. Module authorities may initiate necessary action in these matters in consultation with the

Department concerned at this office:

5.1	Extension of business hours at fully computerised branches
5.2	Introduction of shift system, 7- day banking and round-the-clock banking.
5.3	Installation of Automatic Teller Machines (ATMs) at all fully computerised branches and inter-linking them.
5.4	Installation of Note Counting Machines at fully computerised branches in addition to other eligible branches
5.5	Interlinking of transactions/operations of fully computerised branches.

6. Please arrange to bring the contents of this circular and our Staff Circular No.5 dated the 24th May 1999, the provisions of the Settlement and the new promotion policy as also the scheme for assured career progression to the notice of all the functionaries concerned as well as all the employees working in your branch/office and immediately initiate arrangements for implementation of the provisions thereof at Branch/Zonal Office level."

"Besides duties of a Clerical Cadre (Clerk & Cashier) as a Computer Operator, Single Window Operator may be entrusted with the following duties:

1.	Granting of cash receipts on Bank/Government accounts upto and including Rs.10,000/-.
2.	Passing of Cheques and other debits to constituent's accounts, drafts, government payments for amounts upto and including Rs.10,000/- in cash and Rs.15,000/- in transfer transactions. Powers imply passing and scrolling of the instruments paid by the Single Window Operator as also initialling of pass books which come to him for passing of withdrawals.
3.	Issuance of Travellers Cheques and encashment of Travellers Cheques and Gift Cheques.

4.	Verification of transactions of vernacular signatures/ endorsements over the instruments at the risk and responsibilities of the Bank.
5.	Responsible for all cash directly handled by them.
6.	Responsible for proper exercise of the receiving and passing powers.
7.	Sanction of overdraft to a customer against his (customer's) own TDR/STDR/RD issued by the branch upto Rs.10,000/- as per the laid down instructions.
8.	Encashment of Current Account cheques presented by the customers upto and including Rs.10,000/- and by third parties upto Rs.2,000/-
9.	Encashment of Saving Bank Cheques/Withdrawal forms presented by the drawers themselves upto and including Rs.10,000/-
10.	Encashment of Savings Bank cheques (but not withdrawal forms) presented by third parties upto and including Rs.2,000/-
11.	Encashment of Rupee Travellers Cheques upto and including Rs.10,000/- for each transaction.

4. On a reading of above said circulars, it is obvious that the Bank union had gracefully come to terms with the hard reality that the Banking sector cannot afford to remain in the stone age and successfully resist the I.T. Tsunami. Therefore, they took a bold decision to cooperate with the Management in making the banking industry more customer-friendly, for, that would only ensure the survival and progress of both. These circulars required the award staff to take up additional responsibilities even without formal promotion to the officer cadre so that they do not suffer career stagnation and mental depression. This was not to the liking of the petitioner, who, though a member of the third respondent Federation, has dissented and has filed the present writ petition challenging the reforms.

5. On notice, the respondents 1 to 3 have also filed their counter.

6. This writ petition was dismissed for default on 01.07.2014 and was restored on file by this Court on 08.09.2014

with the following observation:

"The petitioner has filed an affidavit in support of the petition raising many accusation and false allegations not only against the respondents' counsel but also against the Court.

2. However, the learned counsel for the petitioner makes an endorsement to the effect that they want to withdraw the allegations.

3. In view of the same and in order to give an opportunity to the petitioner to contest the matter on merits, this Court is inclined to set aside the order dated 01.07.2014 and to restore W.P. along with WPMPs for final disposal. The writ petition along with WPMPs is restored.

4. Office is directed to list the matter before the concerned Court for the disposal in accordance with law."

7. One Matheswaran, another shirker like the petitioner, wanted to join the bandwagon and filed W.P.M.P. No.207 of 2014 in the writ petition for impleading himself as respondent for playing second fiddle to Viswanathan. The said W.P.M.P. was dismissed on 17.02.2015 by a learned single Judge of this Court, aggrieved by which, the said Matheswaran is said to have filed a writ appeal and the same is said to be pending. Therefore, the counsel for the petitioner and the counsel for Matheswaran submitted that this Court should not take up this case until the disposal of the writ appeal filed by Matheswaran.

8. This Court rejected their argument on the ground that Matheswaran's appeal was in connection with the dismissal of his impleading petition and on that score, this writ petition, which is of the year 2003, cannot be kept pending. Though this Court had dismissed the impleading petition of Matheswaran, yet, in the interest of justice, this Court

permitted the learned counsel for Matheswaran to advance his arguments in support of the writ petition.

9. Heard Mr. Seshadri, learned counsel for the petitioner, Mr.B.K.Singh, learned counsel for Matheswaran, Mr.P.D.Audi Kesavalu, learned counsel for the first respondent, Mr.Chandrasekar, learned counsel for the second respondent, Mr.K. Tamilarasan, learned counsel for the third respondent union and Mr.K.Raju, learned Central Government Standing Counsel for the fourth respondent.

10. Mr.Seshadri, counsel for the petitioner submitted with vehemence that the impugned circulars will not pass muster the

terms of the Sastri and Desai Awards and therefore, they are per se illegal and deserve to be quashed.

11. According to Mr. Seshadri, the two Awards are 'Law' under Article 13 as they were gazetted by the Government under the ID Act and therefore, a mere bipartite agreement between the Management and the union, cannot, in any way, dilute the terms of the Awards. His main contention was that if the impugned circulars are implemented, the award staff may have to face disciplinary action for lapses committed during the course of duty, thereby making them vulnerable. In support of this contention, he cited the case of Matheswaran as an example.

12. Mr. Chandrasekar, learned counsel for the Management raised a preliminary objection by submitting that the impugned circulars are a sequel to the settlement dated 12.04.1999 entered into between the Management and the union under Sections 2(p) and 18(1) of the ID Act and in the absence of the petitioner challenging the settlement, he has no locus standi to challenge the consequence of the settlement. Mr. Chandrasekar further contended that the petitioner cannot challenge the settlement, as he was also a part of the union that signed the settlement and he cannot challenge it after resigning from the union, as he would be estopped from challenging it and he would not have locus standi. Either way, when the settlement has not been challenged, the impugned circulars which are the offshoot of the settlement cannot be the subject matter of challenge.

13. The third respondent union has filed a counter, of which, paragraph no.12 reads as follows:

"12. I deny the averments in para 18 which states that the post of Senior Assistant and Special Assistant are managerial in nature and that the post of Sr.Assistant and Special Assistant are normally Supervisory and Managerial in nature. This Writ Petition has been filed by the Petitioner on a misconception that as per these impugned circulars, he will become Supervisory Official with managerial and Supervisory powers. Firstly, the very fact that these posts are covered by the impugned Settlement shows that it belongs to the category of 'Workman' and hence covered by the Industrial Disputes Act. Secondly, the contention is wholly incorrect, denied because in order to obtain a post which is Supervisory or Managerial in nature, a Clerical Staff has to go through certain rigorous tests which includes a written competitive examination and an interview, apart from the fact that one should have the necessary

educational qualifications, length of service etc. I categorically state that the position of Sr.Assistant and Special Assistant will not transport the petitioner who is an Award staff as a managerial functionary by some automatic method. An Award staff cannot dream of becoming a managerial functionary unless he goes through rigorous exercise of not only being qualified as per the bank's norms, having the necessary qualifying length of service and getting through a rigorous examination, interview and performance appraisal. Unless these steps have been crossed, an award staff cannot go to any supervisory or managerial category."

14. From a conspectus of the facts obtaining in this case, it is beyond cavil that the award staff can never become officers without they clearing the departmental examinations that are conducted in the banking sector. The petitioner is under an illusion that if he is asked to take up additional responsibilities, he might be divested of the protection available under the ID Act as award staff.

15. In the considered opinion of this Court, the petitioner suffers from a misconceived illusion borne out of his reticence to take up additional responsibilities. As rightly pointed out by Mr.Chandrasekar, learned counsel for the Management, in the absence of challenge to the Memorandum of settlement dated 12.04.1999, its offsprings cannot be subjected to judicial challenge under Article 226 of the Constitution of India. The settlement can be challenged by another union by raising an industrial dispute before the appropriate authority and seeking for its adjudication by the concerned Tribunal and not by way of a writ petition, because in writ proceedings disputed questions of fact cannot be satisfactorily adjudicated.

In the result, this writ petition is dismissed as being devoid of merits. The petitioner shall pay costs of Rs.5,000/- to the second respondent Bank and Rs.5,000/- to the third respondent Union, within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gms

To

1.State Bank of India
rep by its Chairman
State Bank Bhavan
Madam Cama Road
Opp.Mantralaya
Mumbai 400 021.

2.The Circle Development Officer
State Bank of India LHO
Aparna Complex
College Lane
Chennai 600 006.

3.State Bank of India Staff
Federation, rep by its
General Secretary, State Bank Buildings
Main Branch Abidcornor
Hyderabad 500 195.

4.The Secretary to Government
of India, Ministry of Labour, New Delhi.

+1cc to Mr.N. Seshadri, Advocate, S.R.No.5838
+1cc to Mr.Anna Mathew, Advocate, S.R.No.5550
+1cc to Mr.P.D. Audikesavalu, Advocate, Sr.No.5531
+1cc to Mr. K. aju, Advocate Sr.No.5432

ssk(CO)
md(13/02/2017)

W.P. No.14686 of 2003

सत्यमेव जयते

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