

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.6.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.A.No.1141 of 2018

S.Viswanathan

Appellant

Versus

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 Building, Main Branch
(Abids corner) Hyderabad 500 195.
4. The Secretary to Government of India,
Ministry of Labour, New Delhi 110 001.

Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 30.1.2017 passed in W.P.No.14686 of 2003 on the file of this court.

Prayer in WP.No.14686/2003:Writ petition filed under Article 226 of the Constitution of India to issue 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 22.6.99 and consequential circular/order No.Cirdo/op & SP/24/2002-03 dated 27.3.2003 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 environment changes and globalisation be referred to a tribunal to be constituted as was done in the case of earlier awards.

For appellant : Mr.N.Seshadri

For RR1 to 3 : Mr.S.Ravindran,
Senior Counsel for
Mr.S.Bazeer Ahamed
For R4 : Ms.Sunithakumari

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the appellant and Mr.S.Ravindran, learned Senior Counsel for respondents 1 to 3 and Ms.Sunithakumari, learned counsel for the fourth respondent.

2. The writ appeal has been filed by an employee of the respondent-Bank being aggrieved by the order passed by the learned Single Judge in declining to quash the circulars impugned in the writ petition.

3. It appears that this writ appeal is filed alleging illegality in a bipartite settlement dated 12.4.1999 entered into between the respondent-Bank and the third respondent Union, but, the appellant/writ petitioner had never challenged the same and he had challenged only the circulars which are based on the said bipartite settlement. In this regard, it is relevant to note that the learned Single Judge has taken into consideration the arguments advanced by the parties at length to arrive at such a conclusion which reads thus:-

"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."

4. Having perused the above, we are of the view that the appellant/writ petitioner has no locus standi either to challenge the impugned circulars or the bipartite settlement, invoking Article 226 of the Constitution of India. If at all, the bipartite settlement can be challenged by the Union by raising an industrial dispute. Moreover, the settlement has taken place through the Union wayback in the year 1999 and the appellant/writ petitioner being member of the Union cannot take 'u' turn and resort to challenge the circulars that too without challenging the bipartite settlement by way of raising an industrial dispute. In such view of the matter, the writ appeal is dismissed. However, liberty is granted to the appellant/writ petitioner to move in the manner known to law and this judgment will not stand in his way to make such a move, if he is so advised. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssk.

+1cc to Mr.S.Bazeer Ahamed, Advocate SR.No.40557

+1cc to Ms.Sunitha Kumari, Advocate Sr.No.40465

+2cc to Mr.N.Seshadri, Advocate SR.No.40349

BS (CO)

sm:24.7.2018

W.A.No.1141 of 2018

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