



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2018

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.13942 of 2011

A.Vaikkalsamy

...Petitioner

Vs.

1.The Assistant General Manager (HR)
State Bank of India,
HR Department, Local Head Office,
Circletop House,
Post Box No.737,
16, College Road,
Chennai - 600 006.

2.The Branch Manager,
State Bank of India,
Palani Branch, Palani,
Dindigul District.

...Respondents

PRAYER: 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 order dated 20.09.2011 in HR:ICT No.1804 passed by the 1st respondent, quash the same and further directing the respondents to give permanent employment to the petitioner in the post of Permanent Messenger in the 2nd respondent Bank.

For Petitioner :Mr.A.D.Ganeshamoorthy
For Respondents :Mr.S.Sethuraman

O R D E R

The relief sought for in this writ petition is to call for the records in relation to the impugned order passed by the first respondent dated 20.09.2011 and to quash the same and to direct the respondents to give permanent employment to the petitioner in the post of Permanent Messenger in the 2nd respondent Bank.

2.The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner was working as temporary Messenger in the second respondent Bank on daily wage basis during the year 1991-1992. The settlement was entered into between the employees and the management in the year 1991 in respect of absorption of the temporary employees as permanent employees of the above said Bank. In this regard, a list was prepared by the

Establishment of the Bank.

3. The learned counsel appearing on behalf of the respondent Bank informed the Court that the list was prepared, on 01.03.1997 itself and the writ petitioner was not absorbed on permanent basis. Now the post sought to be filled up is only by following the recruitment rules of the Bank. This apart, the writ petitioner was appointed only as daily wages employee and he was serving for about one year. Therefore, permanent absorption cannot be granted now by the nationalized Bank, contrary to the recruitment rules in force. Benefit of permanent absorption can be granted only if the initial appointment was made in accordance with the recruitment rules in force. The Constitution Bench of the Hon'ble Supreme Court of India, in the case of *the Secretary, State of Karnataka and others Vs. Umadevi* (3) and others reported in (2006) 4 Supreme Court Cases 1, categorically ruled the legal principles in this regard. Accordingly, all appointments are to be made by following the rules in force, equal opportunity for public employment is a constitutional mandate and therefore, permanent absorption cannot be granted in respect of the appointment made initially in contravention with the rules. This being the principles to be followed, now the list prepared initially, was also lapsed on 31.03.1997. The Hon'ble Supreme Court has settled the legal principles in the year 2006 itself and this Court is not inclined to consider the case of the writ petitioner and it is for the petitioner to participate in the open competitive process.

4. Accordingly, the writ petition stands dismissed. However, there is no order as to costs.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

+1cc to Mr. S. SETHURAMAN, Advocate, SR. 45356

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MM

KK/GT/SAR 4/19.02.2018/ 2P- 2C/