



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.[MD]No.1301 of 2011

and

M.P.[MD]Nos.1 and 2 of 2011

S.Valaiyapathy

: Appellant/Petitioner

Vs.

1.The Chairman & Managing Director,
Indian Overseas Bank,Central Office,
No.762, Annasalai, Chennai - 2.

2.The General Manager,
Industrial Relations Department / Personnel
Administration Department,Indian Overseas Bank,
Central Office, Post Box No.3765,
No.762, Annasalai, Chennai - 600 002.

3.All India Overseas Bank Employees' Union,
Rep. By its General Secretary,
S.Srinivasan,
No.762, Annasalai,
Chennai - 600 002.

4.The Senior Manager,
Indian Overseas Bank,
Town Branch, South Car Street,
Tirunelveli.

:Respondents/ Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to allow this Writ Appeal and set aside the order dated 14.07.2011 passed by the learned Single Judge in W.P.(MD)No.7820 of 2011 on the file of this Court.

Prayer in WP(MD) . 7820/ 2011:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to Impugned Circular in REF.No.est/71/2010-11 dated 23.03.2011 in pursuant to the Memorandum of Settlement in File No.7/3/2011-B3 dated 17.02.2011 on the file of the Respondent No.2 and quash the same as illegal.



For Respondent No.3 : Mr.S.Suresh
for M/s.Aiyar & Dolia
For Respondents 1 & 4: No appearance

JUDGMENT

[Judgment of the Court was delivered by
The Hon'ble Chief Justice]

Heard learned Counsel for the appellant and learned Counsel for the Indian Overseas Bank.

2. The contention raised in this appeal is that the learned Single Judge has erroneously non-suited the Association represented by the appellant from raising the dispute pertaining to a large scale unlawful absorption by the respondent bank by resorting to a method which has been ultimately found by the respondent bank itself to have been implemented wrongly on the basis of the fake and false certificates. Certain criminal complaints are also stated to have been filed and prosecution launched in this regard. The contention, therefore, mainly is that such unlawful engagement by way of absorption should not be permitted, as it is violative of Articles 14 and 16 of the Constitution of India as held by the Honourable Apex Court in the case of **State of Karnataka v. Uma Devi** reported in **2006 (4) Supreme Court Cases 1**. Learned Counsel has relied on paragraph 43 of the said judgment to contend that this back door absorption, therefore, has to be nullified and the action of the respondent bank in proceeding to do so under the circular should be declared to be invalid.

3. Challenge is also raised to the circular issued contending that the scheme itself is unlawful and has been executed in a manner which indicates that the scheme is violative of fundamental rights guaranteed under the Constitution of India.

4. Learned Counsel for the respondent bank, however, submits that the appellant Association or its Secretary does not have any individual locus to maintain the petition inasmuch as the policy is being implemented only in case where the absorption has been found to be valid in true letter and spirit of the scheme itself. It is further submitted that the Secretary of the appellant Association has filed the petition raising the contentions in respect of posts with which he is no way concerned. He is working in a higher post than that of a Clerk and consequently, his individual rights are not affected at all.

5. We have considered the submissions raised and we find that the respondent bank concedes to this that absorptions if any, will be made which are based on correct documents and are in conformity with the scheme itself. The argument on behalf of the appellant that such a scheme by itself would be violative of Articles 14 and 16 of the Constitution of India, is unacceptable, merely because it is



executed in a fraud manner. It would be open to any individual to challenge any appointment in the event it has been unlawfully executed and therefore, we find that the learned Single Judge did not commit any error in proceeding to dismiss the writ petition.

6. Apart from this, we also find that there does not appear to be any material on record which may demonstrate that the absorption in particular of any individual was on account of any such false or fake certificates which even the respondent bank does not support.

7. In the aforesaid circumstances, we see no reason to entertain this appeal and without prejudice to the rights of any individual including the appellant to contest the appointment or absorption to be made by the respondent bank in the event it affects individual rights.

8. Accordingly, this appeal is consigned to records. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

MR/RSB

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-105283[F] dated 17/12/2019)

+1 CC to M/s.T.LAJAPATHIROY, Advocate (SR-105454[F] dated 17/12/2019)

**JUDGMENT MADE IN
W.A. [MD]No.1301 of 2011**

**and
M.P. [MD]Nos.1 and 2 of 2011
16.12.2019**

MR/RSB

TK/SAR. /06.01.2020/3P/3C