IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.17374 of 2011 (O&M)
Reserved on: 18.07.2019
Pronounced on: 13.08.2019

Sumit Mehta

... Petitioner

Versus

State Bank of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. D.S. Bali, Senior Advocate with
Ms. Anshika, Advocate,
for the petitioner.

Mr. Kapil Kakkar, Advocate,
for the respondents.

ARUN MONGA, J.(ORAL)

1. Controversy herein, though short, is whether the termination of the services of the petitioner is in violation of Rule 4 of State Bank of India, Service Rules for Customer Relations Executives(Personal Banking) Rules 2007(for short, 2007 Rules) or not. Yet there is cantankerous litigation qua the same and this is the second round of the writ petition before this Court, after having been earlier dismissed vide order dated 27.01.2016, but the said order was set aside by the Division Bench of this Court in an intra-court appeal filed by the petitioner.

2. Before adverting to the facts of the case, it would be appropriate to reproduce relevant Rule 4 *ibid,* which is as below:-

> *"4. Nature of appointment:*
>
> *4.1 The appointment of Customer Relationship Executives (Personal Banking) will be purely contractual in nature for a specified period. Initially it will be for a period of two years.*

Thereafter, the period for which these officers are to be appointed/ continued in the service of the Bank shall be decided by the DMD & CDO. The contract may be renewed on completion of contractual period depending on the performance and suitability of the officer at the Bank's discretion and needs of the Bank, Non-renewal of the contract of service with the Bank before expiry of the previous period of contractual service shall automatically terminate the service of these officers on the last date of the previous period of contractual service. These officers shall also have the option to renew or not to renew the contract of service at the time of expiry of the current terms of the contract."

3. Referring to the facts. Pursuant to an advertisement, petitioner applied for the post of Customer Relationship Executive(Personal Banking) (for brevity, CRE), which was an open competition and having successful, was appointed as such vide appointment letter dated 15.10.2007(Annexure P-1). The relevant terms and conditions are hereinbelow:-

"2. In this connection, we are pleased to offer you appointment as Customer Relationship Executives (Personal Banking) on contract basis in our Bank. Your appointment in the Bank will, however, be subject to fulfillment of the following formalities:-

I to V XXX

VI Acceptance of 'State Bank of India Service Rules for Customer Relations Executives(Personal Banking)-2007.'

VII to X XXX

3. Your appointment in the Bank will be contractual in nature, initially for 2 years from 01.12.2007 to 30.11.2009 (both days inclusive). Your services are liable to be transferred to any branch/ office of the Bank depending upon the needs and exigencies of service and may not be restricted to any office/ place/ circle."

4. The petitioner states that despite his having worked with utmost sincerity in allocated branch where there was neither any computer infrastructure nor any permanent seat allotted to him, he was issued the letter dated 26.11.2008(Annexure P-2) conveying that his performance is poor and the performance evaluation matrix for the quarters ended 31.03.2008 and 30.06.2008 have been 42.09/ 100 and 24.375/100 respectively.

5. The petitioner responded to the same giving the reasons viz. Non-availability of computer terminal; no permanent seat; assigning of totally unrelated work other than his core responsibilities; assigning of distribution of proceeds of group housing scheme to customers resulting in loss of time to enable him to discharge his own duties; being made to sit in the strong room/ record room even on Sundays disabling him to focus on his core activities; asking him to compensate customers from his pocket; undue red-tapism by Manager in sanction of personal loans; being asked to sort out PDCs of various active and non active accounts, which consumed his almost one and a half weeks and certain other reasons as very elaborately stated in his letter dated 29.11.2008(Annexure P-3).

6. Petitioner states that during period December 2007 to March 2009, he successfully performed his duties by advancing Rs.445.76 lacs, wherein advance sanction was Rs.279.57 lacs against the target of Rs.200 lacs. That apart, he was involved in successful business in housing loans to the tune of Rs. 124.67 lacs, Car loans of Rs.32.70 lacs, Education loan of Rs.9.78 lacs along with his active participation in various financing schemes viz. Housing Schemes at Bahadurgarh, Jind, Kosli, Chandigarh and Jagadhri etc., as reflected from Annexure P-4. Notwithstanding all this, vide

impugned letter/ order dated 27.11.2009(Annexure P-5), the petitioner was discharged with effect from 30.11.2009 without giving any opportunity of hearing. Hence this writ petition assailing the termination of service of the petitioner.

7. In the return filed by the respondent Bank rebutting the allegations levelled in the writ petition, dismissal of the petition has been sought. It is stated that services of the petitioner were terminated as per Clause 3 of the appointment letter and in accordance with the Rule, *ibid.* Therefore, the petitioner has no right to seek permanent absorption in the Bank, particularly, in view of the fact that he had been informed vide letter dated 26.11.2008(Annexure P-2) that he was having a very poor performance.

8. I have heard Mr. D.S. Bali, learned senior counsel assisted by Ms. Anshika, Advocate for the petitioner and Mr. Kapil Kakkar, learned counsel for the respondents and have gone through the rival pleadings.

9. Opening his arguments, learned Senior counsel for the petitioner submitted that the case of the petitioner is squarely covered by a judgment dated 26.06.2014 rendered by High Court of Kerala in WP(C) No. 27178 of 2010 in the case of V.J. Johnson & Ors. Vs. State Bank of India & Ors. The relevant paragraphs of the said judgment read as under:-

> *"11. It was thereafter, the Executive Committee of Central Board of the respondent-Bank in its meeting held on 14/7/2010, approved a policy for permanent absorption of OMRs, CREs, etc., in Junior Management Grade Scale-I (JMGS-1) as Specialist Officers. Going by Ext.P17 in W.P.(C) No.27178/2010, OMRs will be absorbed in JMGS-1 as Specialist Officers, at the initial stage of pay, as Rural Marketing & Recovery Officers. Similarly, CRE-PBs will be absorbed in JMGS-1 as Specialist Officers, at the initial stage*

of pay, as Customer Relationship Officer (PB). As per Para 2.i of Ext.P17, the officers who are in service of the respondent-Bank as on 14/7/2010 will be eligible for absorption, subject to having achieved minimum 60% targets during the year 2009-10 and the performance of the officers will be assessed as per the performance evaluation matrix advised by the Strategic Business Units (SBUs). As per Para 2.xiv of Ext.P17, the benefit of the scheme of permanent absorption will be applicable also to those OMRs/TOFSs who have filed court cases seeking permanent absorption.

12. The stand taken by the respondent-Bank in its counter affidavit is that, only those who were in service as on 14/7/2010 are eligible for absorption subject to having achieved 60% target during the year 2009-10. Since the petitioners were not in service as on 14/7/2010 they cannot claim the said benefit and are not eligible for re-appointment, absorption or extension of contract service. I find absolutely no merit in the above contention taken by the respondent-Bank. In the letters of termination issued by the respondent-Bank, which are marked as Exts.P3 to P9 in W.P.(C)No.27178/2010, as Ext.P6 in W.P.(C) No.28936/2010 and as Ext.R4(b) in W.P.(C)No.35631/2010, the respondent-Bank has no case that, such orders were issued as it was found that their contract of employment need not be renewed on objective consideration and the need of the Bank, in terms of the relevant Service and Conduct Rules.

17. In the result, it is declared that, the action of the respondent-Bank in issuing letters of termination to the petitioners, which are marked as Exts.P3 to P9 in W.P.(C) No.27178/2010, as Ext.P6 in W.P.(C)No.28936/2010 and as Ext.R4(b) in W.P.(C)No.35631/2010, without considering whether they are entitled for renewal or extension of their contract of appointment on completion of contractual period, in terms of State Bank of India Officers-Marketing and

Recovery (Rural) Service and Conduct Rules / State Bank of India Customer Relationship Executives Service and Conduct Rules, depending on their performance and suitability and also non-consideration of their claim for absorption in terms of the approved policy evidenced by Ext.P17 in W.P.(C) No.27178/2010, are per-se arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

18. In the result, these writ petitions are disposed of setting aside the letters of termination issued to the petitioners referred to above and directing the respondent-Bank to consider the question of renewal or extension of their contract of appointment on completion of contractual period, in terms of State Bank of India Officers-Marketing and Recovery (Rural) Service and Conduct Rules/State Bank of India Customer Relationship Executives Service and Conduct Rules, depending on their performance and suitability. In case, the petitioners are found eligible for renewal of extension of contract of appointment, the respondent-Bank shall further consider their claim for absorption in terms of the approved policy evidenced by Ext.P17 in W.P.(C)No.27178/2010, and pass appropriate orders, with notice to the petitioners and giving them an opportunity of being heard, as expeditiously as possible, at any rate, within a period of 3 months from the date of receipt of a copy of this judgment."

10. He further argued that judgment rendered by Kerala High Court (supra) has since attained finality and, therefore, there is no reason why the benefit of the same be not given to the petitioner who is similarly situated as the petitioners in the said case decided by the Kerala High Court.

11. Per contra, learned counsel for the respondents relied on judgment of Madras High Court rendered in **S. Jeyalakshmi Vs. The Chief Manager & Anr., WP(MD) No. 4394 of 2012,** decided on 08.02.2018,

which was also between the respondent Bank and another similarly situated employee, wherein it has been held that a contractual employee cannot claim permanent absorption. All appointment for a sanctioned post has to be done only by following the Recruitment Rules and mere contract appointment will not provide any cause to an employee to seek permanent absorption.

12. He also relied upon another earlier judgment rendered by Madras High Court in **A.Senthil Kumar Vs. General Manager, State Bank of India & Ors. 2011(18) SCT 740,** wherein too it has been held that appointment having been made for a term of two years, the petitioner is bound by terms of contract appointment and renewal of contract appointment for further period is not automatic and it is based on performance, suitability and need of the employer. Madras High Court refused to interfere with the impugned order passed by the Bank terminating the services after expiry of contractual period.

13. Learned counsel for the respondent Bank, therefore, seeks dismissal of the writ petition relying on the ratio rendered by Madras High Court.

14. A careful perusal of Rule 4.1 of 2007 Rules, *ibid,* would go to show that appointment of a CRE though initially will be purely contractual in nature for a specific period, but on expiry of contractual period, further continuation/ renewal is based on performance and suitability of the Officer at the Bank's discretion and need of the Bank. Thereafter, the period for which these Officers are to be appointed or continued in service of the Bank has to be decided by DMD/ CDO. The Rule also envisages that the services of an Officer shall automatically terminate on the last day of period of

contractual service, if not renewed. In simpler terms, it seems that the intent and interpretation of Rule 4.1 is that the initial appointment is for contractual period. Thereafter, the Bank has to consider whether the CRE is entitled for renewal or extension of his contract based on performance and suitability. In the instant case, though termination order does not mention anything whether the performance and suitability of the petitioner were considered for not granting him the renewal, but concededly, the petitioner was issued letter dated 26.11.2008(Annexure P-2), wherein the petitioner's performance has been adjudged as poor and obviously this was the reason of his having been not considered for renewal of his contract. In my opinion, once the respondent Bank had issued the letter dated 26.11.2008(Annexure P-2) conveying about the poor performance of the petitioner, it does not make any difference if the same recital was not mentioned in the discharge letter(Annexure P-5). As per Rule, *ibid,* it was within the domain of the Bank to discharge the petitioner, whose performance was assessed poor, as per the norms.

15. As regards the reliance placed by learned Senior counsel for the petitioner on V.J. Johanson's case (supra), there is though some substance in the arguments that the termination order ought to have stated whether the petitioner's contractual appointment was not renewed after due objective consideration in terms of the relevant Conduct Rules. But the termination order, when read along with earlier letter dated 26.11.2008, which conveyed that the performance of the petitioner was found poor, the said argument also turns quite insipid. The petitioner in view of his work performance cannot seek benefit of the judgment rendered by Kerala High Court.

16. Qua the respondents No.4 to 6 allegedly having been given

preference over petitioner, in my opinion, the respondent Bank has not indulged in any hostile discrimination against the petitioner. The stand taken by the respondent Bank, and rightly so, is that the case of respondents No.4 to 6, were in service of Bank at the time of implementation of absorption policy(Annexure R-4) vide letter dated 20.07.2010, while the petitioner who was discharged much earlier on 30.11.2009. The policy of absorption came only as per the corporate office letter dated 20.07.2010 and at that time the petitioner was not in the service, whereas the said 3 employees were appointed on 22.12.2008, 21.12.2009 and 12.12.2009, respectively, on contractual basis and were in service at the particular time and they had achieved the given target as per the policy dated 20.07.2010.

17. Perusal of Policy dated 20.07.2010(Annexure P-6) makes it apparent that only the categories of employees mentioned therein, who were in the service of the bank as on 14.07.2010 will be eligible for absorption that too subject to having achieved minimum 60% targets during the year 2009-10 and their performance was to be assessed on the basis of performance evaluation matrix, which in the case of the petitioner was poor as per the stand taken by the respondent Bank. It is apparent from a perusal of clause 2(xiv) of the Policy that an exception was provided to extend the benefit of policy to the employees who had filed the Court cases seeking permanent absorption. The petitioner, who was discharged w.e.f. 30.11.2009, much prior to the issuance of policy, is, thus, not entitled to benefit thereof.

18. Even otherwise, I am in agreement with the view taken by Madras High Court in the case of S. Jeyalakshmi(supra), which is later in time. The judgment relied upon by the petitioner on V.J. Johnson's case

(supra) is of no avail as in the said case the petitioners therein had achieved the minimum of 60% targets during the relevant years and were eligible and more suitable than the petitioner herein, for renewal of contractual service.

19. The another limb of argument of learned Senior counsel for the petitioner is that respondents No.4 to 6 have not achieved the minimum requisite target of 60% and yet they were given the benefit of renewal of contract. Though, the respondent Bank has not adverted to this specific averment of the petitioner in its written statement, but without going into the aspect, whether or not respondents No.4 to 6 had met the minimum target of 60%, suffice to say that their case stands on different footing as they were in service on the date of issuance of policy dated 24.07.2010, which clearly states that the same will be applicable to only those who were in service after the date of policy. As noted above, admittedly, the petitioner's contractual term was over on 30.11.2009, way before the date of policy, therefore, this plea of the petitioner is irrelevant for the purpose of adjudication of this case.

20. For the reasons recorded above, there is no merit in the petition and the same is accordingly dismissed.

21. No costs.

(ARUN MONGA)
13.08.2019 **JUDGE**
Jiten

1. Whether speaking/reasoned Yes/No

2. Whether Reportable Yes/No