



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
16.04.2021	23.04.2021

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CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI**

W.A. (MD) No.812 of 2018

M.Krishnan ... Appellant/Petitioner

-vs-

The Regional Manager
Regional Office
Central Bank of India
1st Floor, Raja Muthaiya Mandram
Madurai-625 020 ... Respondent/Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 28.02.2018, passed in W.P.(MD) No.7651 of 2013, on the file of this Court.

Prayer in WP(MD). 7651 of 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus to direct the Respondent to consider the name of the Petitioner and appoint the Petitioner to the post of Safai Karmachari-cum-sub staff and/or Sub staff on a regular basis with effect from the date on which the other candidates were appointed and to pay all the consequential arrears arising thereon and granting such other and further relief.

For Appellant : Mr.K.M.Ramesh

For Respondent : Mr.T.M.Hariharan

J U D G M E N T

T.S.SIVAGNANAM, J.

The appellant is the writ petitioner in W.P.(MD) No.7651 of 2013, which was dismissed by order dated 28.02.2018.

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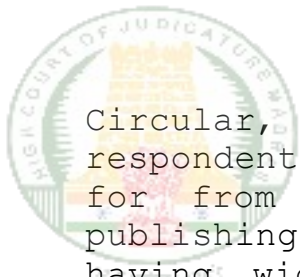
2. The appellant filed the writ petition praying for issuance of a writ of mandamus directing the respondent - Bank to consider his case and appoint him in the post of Safai Karmachari-cum- Sub Staff and / or Sub Staff on a regular basis with effect from the date on which the other candidates were appointed and to pay all the consequential benefits.

3. The appellant's case is that he was employee of the respondent - Bank from 1997 till his services were orally terminated in February, 2013 and that he had been an employee for more than eight years with artificial break, which would clearly show that the post in which the appellant functioning is a permanent post, for which applications were invited and appointments were made.

4. The appellant would further state that the service rendered by him for eight years cannot be treated as a temporary service and the break, which was given, is artificial break and hence, the service should be treated as a continuous service and the appellant is deemed to be a permanent employee of the respondent - Bank. It is submitted that there are several persons, like the appellant, who were employed by the respondent - Bank and ultimately, the Management of the respondent - Bank and the All India Central Bank Employees Federation (Union) entered into a settlement dated 09.08.2012, wherein, it was agreed as a one time measure to appoint the employees, who were already worked in the Bank. The appellant would state that he having worked for more than eight years was fully qualified for being appointed as Safai Karmachari-cum-Sub Staff on full time basis along with the candidates, who applied from the open market.

5. It is further submitted by the appellant that the respondent - Bank invited applications from eligible candidates by paper publication dated 02.11.2012 and he applied for the said post and attended interview on 11.01.2013. Therefore, it is submitted that the appellant cannot be denied appointment on the ground of qualification or eligibility as he was fully qualified and eligible to be appointed to the said post. However, the appellant having not been selected, approached the Writ Court contending that his non-selection is arbitrary and unreasonable. Further, it was contended that the non-selection of the appellant has defeated the very object of the Settlement entered into between the Management of the respondent - Bank and the Union.

6. The respondent - Bank resisted the prayer sought for by the appellant by contending that for the Madurai Region of the respondent - Bank, 25 posts of Safai Karmachari and 21 posts of Sub Staff, were sanctioned. In terms of the

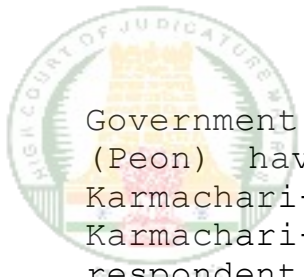


Circular, dated 14.08.2012, issued by the Central Office of the respondent - Bank, the names of the candidates should be called for from the concerned District Employment Exchanges and by publishing an advertisement in dailies in regional languages having wide circulation. Further, as the one time measure, temporary / casual workers engaged by various Branches, within the guidelines of the Bank, were permitted to participate in the selection process along with fresh candidates. The selection was required to be done by conducting an interview. It is submitted that in terms of the direction issued by the Central Office, advertisement was issued calling for applications from the eligible candidates to fill up 46 posts (25 posts of Safai Karmachari + 21 posts of Sub Staff). The guidelines to be followed for selection was duly mentioned in the said advertisement. Further names were also called for from the Employment Exchanges and Ex-Servicemen Welfare Associations. In response to the advertisement, 3500 applications were received and after processing the same, interview call letters were sent to the eligible candidates. The appellant having worked as temporary / casual worker, for more than 45 days in the respondent - Bank, was permitted to apply and called for interview.

7. The respondent - Bank would further submit that interview for the candidates was conducted from 19.12.2012 to 22.12.2012 and 11.01.2013. It was submitted that based on the performance and based on the marks of the candidates in the interview and following the reservation policy, 46 candidates were selected and appointed. The name of the appellant does not appear in the list of selected candidates, consequently, to mean he was not selected for the said post.

8. Further, the respondent - Bank would submit that in terms of the Circular, the appellant being temporary / casual worker was given an opportunity to apply and attend the interview along with the fresh candidates and the selection was to be done based on the performance of the candidates in the interview. Further, those temporary / casual workers, who do not apply for the recruitment and those, who have participated in the recruitment process and were not selected, will have no right / claim whatsoever to be called again for such recruitment in future. Therefore, it is submitted that merely because the appellant worked as a casual / temporary worker, he is not entitled to automatically be appointed.

9. Further as per the Circular, only the existing full time Safai Karmachari-cum-Sub Staff with five years of service, will be considered for conversion as Sub Staff (Peon) after following the process of conversion to the extent of 25% of vacancies of Sub Staff as per the relevant guidelines of the



Government of India. Therefore, 25% of vacancies of Sub Staff (Peon) have to be filled up by converting the existing Safai Karmachari-cum-Sub Staff and since there was no full time Safai Karmachari-cum-Sub Staff with five years work experience in the respondent's region, when the recruitment was made, the question of filling up of 25% of vacancies by converting the Safai Karmachari-cum-Sub Staff (Peon) will not arise.

10. Further, the respondent - Bank would submit that 55 candidates, like the appellant, were called for the interview and 11 candidates have been selected, who have issued with posting orders and have been working in various Branches since 25.02.2013. Further, the independent recruitment process was done strictly based upon the guidelines stipulated in the Circular dated 14.08.2012 and the contention of the appellant that selection is arbitrary is baseless and untenable. The instant selection process was completed on 25.02.2013 and the appellant having participated in the interview and having not been selected cannot claim any right to be appointed merely because, he had worked as casual / temporary worker. On these grounds, the respondent - Bank sought for dismissal of the writ petition.

11. The learned Single Bench, after taking note of these facts, held that a mere temporary service for about eight years cannot be a ground for claiming permanent absorption and that the appellant did not question his disengagement as a temporary employee, but, subsequently participated in the selection process conducted in the year 2012 and having been unsuccessful, cannot claim the relief sought for in the writ petition.

12. The appellant being aggrieved by the said order is before us by way of this appeal.

13. We have heard Mr.K.M.Ramesh, learned counsel appearing for the appellant and Mr.T.M.Hariharan, learned counsel appearing for the respondent - Bank.

14. The undisputed facts are that the appellant was working as a temporary employee in the respondent - Bank. The employment was not continuous and as admitted by the appellant, there was a break in service. The appellant would contend that the break in service was artificial break. However, at no earlier point of time, the appellant raised such a contention nor sought for permanent absorption in the service of the respondent - Bank and therefore, he is precluded from raising such a contention before the Writ Court for the first time. Thus, it has to be held that the appellant was a temporary employee and was not in continuous service for eight years as claimed by him. The



absorption. The appellant did not challenge his disengagement. The respondent - Bank took a policy decision in the light of the rapid expansion of the branch network coupled with progressively increasing sub-ordinate staff strength year after year due to large scale retirements etc., the need for recruitment of sub-ordinate staff is being felt. As a prelude to recruitment of sub-ordinate staff, as a pro-employee initiative, the Management has converted all the permanent part time Safai Karmachari in sub-ordinate cadre into full time wages with the designation Safai Karmachari-cum-Sub Staff with effect from 01.04.2011.

15. At that juncture, negotiations were made by the employees' Federation with the Management of the respondent - Bank, which culminated in a Memorandum of Settlement dated 14.08.2012. In the Settlement, it has been recorded that the respondent - Bank has decided to recruit subordinate staff with the designation Safai Karmachari-cum-Sub Staff from due process and considering the fact that some of the Branches have engaged temporary / casual workers in the subordinate cadres within the Bank's guidelines, subject to certain conditions, giving an opportunity to them to participate in the recruitment process along with fresh candidates for selection to the post of Safai Karmachari-cum-Sub Staff is with a humane approach and also to provide an opportunity to such casual workers, whose cases for absorption in the Bank services are pending in various Courts and Tribunals to settle their disputes through out-of-Court mechanism, discussions were had by and between the parties for a considerable length of time. After series of discussion, it was agreed by and between the Management and the Federation that as a one time measure, such temporary / casual workers so engaged by the various Branches within the guidelines of Central Office, Management will be allowed to participate in the recruitment process for selection to the post of subordinate staff with designation Safai Karmachari-cum-Sub Staff and / or Sub Staff on full time basis subject to fulfilling certain conditions, which were set down in the Memorandum of Settlement.

16. Further, it was mutually agreed between the employees' Federation and the Management that out of the vacancies of Sub Staff so identified to be filled through recruitment process, the existing Safai Karmachari will be considered for conversion as Sub Staff to the extent of 25% of vacancies as per the relevant guidelines of the Government of India under the recruitment process only. Further, it was agreed that such an opportunity is a one time measure applicable only for the said recruitment process and should not be quoted as a precedent in future. Further, the temporary / casual workers, who do not apply for the process of selection, pursuant to the settlement for reasons whatsoever and / or those, who having participated in the



process, but could not be selected, have no rights / claim whatsoever to be called again for such process in succession or in future.

17. The terms and conditions of the settlement are clear as it does not give any indefeasible right to any temporary / casual workers. The settlement has provided an opportunity to such temporary / casual workers like the appellant to participate in the selection process and this was agreed to by the employees' Federation in order to settle the disputes between the employees and the respondent - Bank, which were pending before various Courts, Tribunals etc. The appellant has accepted the terms and conditions of the settlement, applied for participating in the recruitment process, called for interview, but was unsuccessful. The appellant has not challenged his non-selection, which could not be done for various reasons and even if it is done, the selected candidates ought to have been impleaded as parties to the petition. Therefore, to merely state that the appellant has to be appointed in the post Safai Karmachari-cum-Sub Staff is a prayer, which cannot be granted. Therefore, the plea of the appellant that he continuously worked for eight years and fulfilled the conditions stipulated in the Memorandum of Settlement and therefore, he should be appointed to the said post is an argument, which has to be outrightly rejected. Unless and until the appellant fulfilled the conditions stipulated in the Memorandum of Settlement, he would not have been called for interview for the said post. Merely because the appellant was called for interview, it will not confer any right on him to be selected and appointed. The appellant's name was not found in the selection list would go to show that he was not selected and did not achieve the required bench mark for being considered for the selection.

18. For all the above reasons, the learned Writ Court has rightly declined to grant the relief sought for in the writ petition and we find no ground to interfere with the orders passed in the Writ Court.

19. In the result, the writ appeal fails and it is dismissed. No costs.

Sd/-

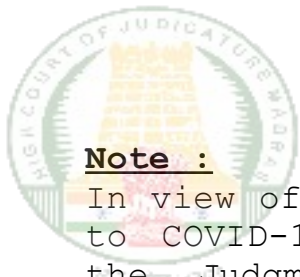
Assistant Registrar(Records)

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Sub Assistant Registrar(CS)

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Note :

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To

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Madurai-625 020

+1 CC to M/s.K.M.RAMESH, Advocate (SR-17201[F] dated 23/04/2021)

+1 CC to M/s.T.M.HARIHARAN, Advocate (SR-17229[F] dated 23/04/2021)

JUDGMENT

IN

W.A. (MD) No.812 of 2018

23.04.2021

VR(CO)

TR(18.05.2021) 7P 4C