

Joseph N.J. Vs. Asst. General Manager, Bank of Baroda and anr.

Joseph N.J. Vs. Asst. General Manager, Bank of Baroda and anr.

SooperKanoon Citation : sooperkanoon.com/730916

Court : Kerala

Decided On : Nov-16-1998

Reported in : (1999)IILLJ178Ker

Judge : Ar. Lakshmanan and; K. Narayana Kurup, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 18(1)

Appeal No. : W.A. No. 1850/1998

Appellant : Joseph N.J.

Respondent : Asst. General Manager, Bank of Baroda and anr.

Advocate for Def. : Latha Krishnan, Adv.

Advocate for Pet/Ap. : N.J. Johnson, Adv.

Disposition : Appeal dismissed

Judgement :

Ar. Lakshmanan, J.

1. Heard learned Counsel for the appellant. The appeal is directed against the judgment of C.S. r AJAN, J. in O.P.3995/97. The appellant filed the Original Petition to call for the records leading to Ext. P-3 communication and quash the same and for a mandamus directing the respondents to allow the appellant to

participate in the promotion test scheduled to be held on March 9, 1997 at Ernakulam. Along with the Original Petition appellant filed Exts. P-1 to P-6 and P-7 and P-8. Along with reply affidavit, the respondents filed Exts. R-1(a) and R-2(a) along with their counter-affidavit. We have gone through the pleadings and heard arguments of counsel appearing on either side. In the instant case the appellant was employed as a local recruit in the United Arab Emirates branch. His services were terminated in July 1986 on account of the decision of the bank to close down the said branch. When the services of the appellant were so terminated, he filed O.P.9416/86 for re-employment in the Bank which was disposed of by this Court on February 10, 1987 under Ext.R-1(a). A learned single Judge of this Court disposed of the Original Petition with a direction to the respondents therein to consider Ext. P-3 together with Ext. P-3(a) sympathetically and take a decision thereon within two months from that date. As per the terms of appointment in Bank's branches in U.A.E. the services of locally recruited staff are not transferable to any branches/offices of the bank in India. But, however, based on the judgment in O.P. 9416/86 the case of the appellant was considered sympathetically and decided to employ the appellant as a fresh recruit as a special case. The appellant was thus appointed as per Ext. P-6 appointment order. Ext. P-6 is the appointment order dated April 22, 1987. The appointment was subject to various conditions including the probation for a period of six months which may be extended by the bank at its discretion. The appellant as per the appointment order have to furnish the bank with security deposit as furnished in the appointment order. The appellant was requested to signify his acceptance in writing by returning the duplicate of the appointment letter at the bottom thereof in the space provided and report for duty at their Kalamassery branch on or before May 7, 1987. The appellant accepted the terms and conditions of the fresh appointment dated April 22, 1987 by affixing his signature in token of his having accepted the terms of appointment. Para 4 of the appointment order states that the appellant is bound by all the Bank's rules and regulations in force from time to time and will be liable to be transferred to any of the Bank's branches/offices and also bound to observe strict secrecy in regard to the dealing of the Bank and its customers. It is thus seen that the appellant was appointed as per the terms and conditions of Ext.

2. The promotions from clerical cadre to the Officers cadre is effected based on the promotion policy governed by bipartite settlement signed between the management and recognised union from time to time. A copy of the bipartite settlement was placed before us and the learned counsel for the appellant was also permitted to peruse the same though he disputed that the said bipartite settlement was not produced before the learned single Judge at the time of hearing. In the said promotion policy eligibility for promotions are specified. One such settlement was signed on September 22, 1977 which is the first settlement of its kind. As per the said settlement, candidates in minimum prescribed service will be eligible for written test. The appellant had applied for promotion in the year 1987-88 and his request was rejected on the ground that he has not completed required number of years of service. Subsequently the matter was again reconsidered at the request of the appellant and in the absence of any specific provision in the promotion policy settlement dated September 22, 1977 which was in force at that time, that services rendered in overseas branches will not be counted towards the eligibility criteria, the appellant was allowed the benefit of his service rendered in U.A.E. branch. Thus he was allowed to participate in the promotion exercise. The Bank has completely superseded 1976 settlement in 1991 as per settlement dated February 16, 1991. The settlement dated February 16, 1991 was also superseded by another settlement entered into between the management and recognised union dated November 2, 1994. The present promotion exercise is based upon the promotion policy contained in the settlement dated November 2, 1994. Under these circumstances the Bank issued circulars inviting applications for written test for promotion from clerical cadre to officers cadre in junior management grade as per circular dated January 6, 1997. The eligibility criteria is clearly specified in the promotion policy settlement dated November 2, 1994. As per the present promotion policy settlement there are two channels for promotion viz., All India Channel and Seniority Channel. For All India Channel 65% is set apart whereas for promotion under Seniority Channel 35% was set apart. For Seniority Channel the minimum required period of service is 15 years. The appellant has applied only in the Seniority Channel and not in All India Channel. It is submitted that in the Circular Ext.R-1 (b) the active service for the said purpose has been defined. It has clearly been specified that only the present

and past service in the Bank in the clerical cadre in India will be considered as eligible for promotion from clerical to officers' cadre. Learned counsel for the Bank submitted that the appellant is not eligible to be considered for promotion under Seniority Channel. We are of the opinion that the learned counsel for the Bank is right in her submission. Thus we are of the opinion that the appellant is not entitled to any of the reliefs claimed in the Original Petition.

3. Learned counsel for the appellant cited the decision reported in General Manager, Security Paper Mill, Hoshangabad v. R.S. Sharma, 1986 2 SCC 151 in support of his contention that in the case of a settlement not arrived at in the course of conciliation proceeding it has to be in writing and signed by the parties in the prescribed manner and a copy of the settlement should be sent to the officer authorised by the appropriate Government in this behalf and to the Conciliation Officer. Such a settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceedings is binding only on the parties to the agreement as provided in Section 18(1) of the [Industrial Disputes Act, 1947](#). Such a settlement is not binding on the other workmen who are not parties to the settlement. We are of the opinion that such a contention is far-fetched. The bank has been acting on the settlement reached between the workers representing the majority recognised union and the management. The appellant challenged the bipartite settlement as not binding on him on the ground that he is not a party to the settlement. If the appellant is aggrieved against the bipartite settlement which is invoked for all these years it is always open to him to challenge the same in a manner known to law. There are absolutely no merits in the Writ Appeal. Writ Appeal fails and is dismissed. No costs.