

**N. Krishnamurthy Vs. the Management of State Bank of India Represented by Its Chief General Manager**

**N. Krishnamurthy Vs. the Management of State Bank of India Represented by Its Chief General Manager**

**SooperKanoon Citation :** [sooperkanoon.com/821957](http://sooperkanoon.com/821957)

**Court :** Chennai

**Decided On :** Oct-18-1994

**Reported in :** (1995)1MLJ399

**Appellant :** N. Krishnamurthy

**Respondent :** The Management of State Bank of India Represented by Its Chief General Manager

**Advocate for Pet/Ap. :** Mr. M.S. Subbiah

**Judgement :**

ORDER

**Jayasimha Babu, J.**

1. The petitioner herein who has been employed in the Madurai Branch of State Bank of India from 18.5.1970 to 28.2.1971 with some short breaks, as temporary clerk-cum-typist, has in this writ petition, filed on 15.10.1984 sought a writ of mandamus directing the respondent - bank to reinstate him in service as clerk-cum-typist or in any other branches with continuity of service and for consequential relief. The termination of the services of the petitioner on 28.2.1971 is challenged on the ground that the employer had failed to comply with the mandatory provisions of Section 25-F of the Industrial Disputes Act rendering the termination

invalid.

2. Though the respondent-bank in its counter has stated that the petitioner had worked only for 104 days and contended that the petitioner was not entitled to the protection of Section 25-F, in the light of the letters of appointment issued to the petitioner periodically between 18.5.1970 and 29.1.1971 which letters have been produced by the petitioner, it is clear that the petitioner had been employed for over 240 days in the 12 months period immediately preceding the date on which his employment was terminated.

3. The petitioner's contention is that in view of the employer's admitted non-compliance with the requirement of Section 25-F of the Act, the termination is void. Petitioner also contends that the respondent having permitted other former employees of the bank to take tests in the year 1983 and 1984 and offered appointments to those who came out successful, the employer bank has discriminated against this petitioner by not permitting him to take such test in 1984.

4. For the respondent employer, it is contended that the petition was liable to be dismissed in limine on the ground of laches in view of the inordinate and unexplained delay of 13 years in approaching this Court.

5. It is submitted for the respondent that after the judgment of the Supreme Court in 1976 in the case of State Bank of India v. N. Sundaramoney : (1976)ILLJ478SC , the respondent- bank has offered appointments to a large number of temporary employees whose services were terminated and who approached bank in time. It is pointed out that one Sundaramoney whose case was similar to that of the petitioner had in W.P. No. 6255 of 1972 filed in this Court on 4.12.1972 challenged the termination of his services on 18.11.1972. This Court by its judgment dated 19.7.1993 rendered by K.N. Mudaliar, J. held that the retrenchment of Sundaramoney was void. The Division Bench having affirmed that judgment, in the appeal preferred by the employer the Supreme Court by its Judgment rendered on 16.1.1976 dismissed the employer's appeal and held that the termination of the temporary employee Sundaramoney without complying Section 25-F of the Act was void. Immediately after the Judgment, the State Bank of India re-employed all the employees who had been temporarily employed and terminated and who

sought reinstatement. In that connection, the Bank had issued instructions to the branches on 24.11.1977 regarding the manner in which the claims of such temporary employees who sought reinstatement should be dealt with. 819 such employees were reinstated after subjecting them to written tests and interview, the bank agreed to reemploy 768 more such former temporary employees pursuant to an agreement with such employees in I.D. No. 11 of 1977 which ended with the passing of an Award on 4.10.1978.

6. The respondent therefore contends that it had properly considered the claims of all those temporary employees who had approached the bank within a reasonable time and the petitioner not having approached the Bank earlier, even when more than a thousand other similarly placed former employees did, the petitioner cannot claim any right in respect of a claim which has become stale. The respondent does not owe a statutory duty to seek out each and every person who had been employed as a temporary employee and it is for them to come forward with their claim without loss of time, even as the petitioner Sundaramoney did in approaching this Court within three weeks of the termination, and over a thousand others rejoined within a reasonable period after the Supreme Court delivered judgment in Sundaramoney's case. It was argued for the respondent that the person who claims a right has a duty to take proper steps at the appropriate time for the enforcement of that right and in any case within a reasonable time and by sleeping over such rights, the petitioner cannot be permitted to cause prejudice to the thousands of other employees in service.

7. As regards the allegation of the petitioner that the Bank had offered employment to the former temporary employees even in the year 1983-84 itself, it is submitted that the bank had periodically been conducting tests and interviews and persons who were eligible to take the examination had been allowed to appear and those successful in the tests and interviews had been offered employment. Some of the persons so employed were persons who had served in the bank temporarily during the earlier periods. The fact that they were all temporary employees was not the only basis for their subsequent employment. The petitioner cannot claim to be senior to all other temporary employees who were employed subsequent to his termination, as the Bank maintained no such seniority list of the employees who

were appointed temporarily. The charge of the petitioner that he was discriminated against has been refuted.

8. Mr. M.S. Subbiah learned Counsel for the petitioner relied upon several rulings of the Supreme Court, as also the rulings of this Court in support of his submission that the failure on the part of the employer to comply with the requirement of Section 25-F of the Industrial Disputes Act renders the termination ab initio void and that such an employee is entitled to claim reinstatement with continuity of service and back wages.

9. Learned Counsel referred to N. Sundaramoney v. The State Bank of India, Kuzhithurai Branch (1973) II L.L.J. 551, State Bank of India v. N. Sundaramoney : (1976)ILLJ478SC , State Bank of India, Madras v. Central Government Industrial Tribunal, Madras and Anr. : (1990)IILLJ365SC and P. Manickam v. Chief General Manager, State Bank of India .

10. Learned Counsel also submitted that the delay in approaching the court does not itself disentitle the petitioner from claiming the relief and relied on the case of Lokku Zachariah v. Union of India, 1986 Lab.I.C. 1203, Ram Chandra Yadhav v. State of Bihar : (1988)IILLJ343SC and Lt. Governor of Delhi and Ors. v. Dharmapal and Ors. : (1991)ILLJ605SC .

11. The non-compliance with Section 25-F of the Act renders the order void, is well settled law and is also rightly not disputed by the learned Counsel for the respondent.

12. The decisions relied upon by the learned Counsel for the petitioner regarding the effect of delay in approaching the court are cases where the courts on the facts of the cases before them were persuaded to exercise the discretion to grant limited relief to the petitioners and these decisions do not lay down that the court should in all cases condone the delay and grant the reliefs sought. Financial unsoundness, being a member of weaker section of the community as also the fact that relief sought being monetary, weighed with, the learned Single Judge in granting limited relief despite the delay is approaching the court in the case of Lokku Zachariah v. Union of India and Ors. 1986 Lab.I.C. 1203. In the case of

Ramachandra Yadhav v. State of Bihar : (1988)ILLJ343SC , the Supreme Court granted reinstatement but without backwages on account of the delay in approaching the court. The report does not set out the factual background in which that order came to be made. In the case of Lt. Governor of Delhi and Ors. v. Dharmapal and Ors. : (1991)ILLJ605SC , relief was granted on the ground that similar relief to others similarly stated had been granted and Article 14 required that the same treatment be accorded to the petitioners.

13. The explanation given by the petitioner for the delay of thirteen years in approaching the Court as set out in Para, 9 of the petition is:

I state that I was not aware of the said policy decision of the respondent bank referred to above till May, 1984 when I happened to meet one Mr. Vallinayagam who was then employed as an officer in the personnel Department at Madurai Regional Office who informed me about the policy and asked me to apply to the bank. Immediately on 5.5.1984 I made a representation followed by reminder on 18.6.1984. I received a reply from the Bank dated 28.6.1984 stating that the Bank regrets its inability to consider my request for permanent employment in the bank without assigning any reason.

In the counter filed by the respondent-Bank of Para. 14, it is stated that 'with regard to Para. 9 of the petitioner's affidavit, it is submitted that to the knowledge of the respondent, no officer by name Vallinayagam was working in the personal Department in Madurai Regional Office during the relevant period.

14. It is not the plea of the petitioner that he himself had taken any steps to challenge the termination effected in February, 1971 or was prevented from approaching the court on account of any reasonable cause. His case is that he fortuitously came to know of the Bank is policy of re-employing its former temporary employees, and that he thereafter applied to the bank. Obviously the petitioner had no grievance against his termination, as is clear from his conduct. The petitioner had not made any attempt at any point of time for 13 years to question the validity of the termination before any forum.

15. This petition filed 13 years after the termination was effected and without any satisfactory explanation for the delay, clearly suffers from laches.

16. The following observation of the Supreme Court in the case of Bhoop Singh v. Union of India A.I.R. 1992 S.C. 1404 would squarely apply to the petitioner's case as well:

No attempt has been made by the petitioner to explain why he chose to be silent for so long if he too was interested in being reinstated and had not abandoned his claim, if any, if the petitioner's contention is upheld that lapse of any length of time is of no consequence in the case, it would mean that any such police constable can choose to wait even till he attains the age of superannuation and then assail the termination of his service and claim monetary benefits for the entire period on the same ground. That would be a startling proposition. In our opinion this cannot be the true import of Article 14 or the requirement of the principle of non-discrimination embodied therein, which is the foundation of petitioner's case.

17. Petitioner has complained of discrimination on the ground that though other temporary employees whose services had been similarly terminated, had been reinstated by the respondent bank subsequently. Petitioner has not been given similar treatment. The respondent- Bank as rightly submitted by Mr. Gopalan, learned Counsel for the bank had no statutory duty cast on it to intimate the petitioner that he should seek re-employment under the respondent on the basis of his earlier employment. The respondent has also explained that the persons re-employed were given employment on the basis of their performance in a test and interview. If the petitioner had applied the respondent would have afforded him also an opportunity to sit for the test. But in the present case, the petitioner had not made any such request to appear for the test conducted by the bank prior to 1984.

18. Consequences of a stale claim being entertained and its impact on the administrative set-up and on other employees have also been examined by the Supreme Court in the judgment referred to earlier. The court at Para, 7 of the judgment : (1993)ILLJ260SC , has observed as follows:

It is expected of a Government servant who has a legitimate claim to approach the court for the relief he seeks within a reasonable time, assuming no fixed period of limitations plies. This is necessary to avoid dislocating the administrative set up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant, This is a material fact to be given due weight while considering the argument of discrimination in the present case for deciding whether the petitioner is in the same class as those who challenged their dismissal several years earlier and were consequently granted the relief of reinstatement.

19. The effect of laches was further stressed by the said court at Para, 8 of the said Judgment, There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner irrespective of the merit of his claim. If a person entitled to relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that right. Others are then justified in acting on that. This is more so in service matters where vacancies are required to be filled promptly.

20. I am therefore of the view that the long delay in approaching this Court for relief has not, been satisfactorily explained by the petitioner and the delay in approaching the court is solely attributable to the petitioner being the result of his own failure to act, despite there being no impediment to the petitioner in approaching this Court or any authority under the Industrial Disputes Act during this period for relief. This petition clearly suffers from laches. The petitioner is, therefore, not entitled to the relief of reinstatement or any other consequential relief prayed for in this petition and this petition deserves to be dismissed.

21. Before parting with this case, it is necessary to place on record the statement of the counsel for the respondent, which statement is not disputed by the petitioner, that the petitioner has since been given employment in the respondent bank and he has been serving in the bank as a clerk-cum-typist from 17.10.1989, in which post he has also been confirmed. This appointment was given to the petitioner after he was subjected to a test and interview held in April, 1989, the petitioner having been successful in that test and interview.

22. This writ petition is dismissed. Parties shall bear their respective costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**