

“NON-REPORTABLE”

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No.10845 of 2009

H.S. Rajashekara

.... Petitioner

Versus

State Bank of Mysore & Anr.

.... Respondents

J U D G M E N T

JAGDISH SINGH KHEHAR, J.

1. The petitioner herein was inducted into the service of the State Bank of Mysore (hereinafter referred to as, the Bank) as a temporary Sub-Staff in 1985. He was intermittently taken into employment based on the need for such staff. During the year 1994-95, he claims to have rendered more than 240 days of service in a calendar year. Based thereon, he claimed that he be included in the “protected category” of employees. Having satisfied the “protected category” criteria, the petitioner applied for absorption as a permanent employee, by citing the example of one Devaraju, by addressing representations to the Bank. It is also the contention of the petitioner, that the employees union of the Bank also addressed a communication dated 13.12.1997 to the management of the

Bank requiring it to absorb the petitioner as a permanent employee. Since the representations made by the petitioner, and recommendation made by the employees union of the Bank, did not result in any consideration at the hands of the Bank, the petitioner approached the High Court of Karnataka (hereinafter referred to as, the High Court) by filing a Writ Petition being W.P. No. 45932 of 1999. The aforesaid Writ Petition came to be disposed of by a learned Single Judge of the High Court on 14.12.2004. In this behalf, it would be relevant to mention, that the High Court did not examine the merits of the controversy raised by the petitioner. Rather than doing that, the High Court directed the Bank to take a decision on the representation made by the petitioner by passing a written order. The Bank was also directed to communicate the same to the petitioner.

2. The bank, while examining the claim raised by the petitioner, noticed the contention of the petitioner as under:-

- “(i) He has worked in several branches in Mysore during the period 1985 to 1997.
- (ii) During 8.7.1994 to 30.8.1995, he has served for 292 days.
- (iii) State Bank of Mysore Employees Union has recommended him to be employed on permanent basis. He has given applications in this regard.
- (iv) He has passed SSLC.
- (v) One of his colleagues, one Shri Devaraju has also passed SSLC and he has been given employment on permanent basis. Therefore, he has prayed for passing of suitable

order of appointment in his favour equivalent to the job given to one Shri Devaraju.”

Despite the aforesaid pleas raised at the hands of the petitioner, the Bank by an order dated 24.8.2005, rejected the petitioner's claim for absorption as a permanent employee. Two reasons were indicated in the order dated 24.8.2005 for not accepting the petitioner's claim. It was found, that the petitioner had not worked for 240 days in a calendar year, and that, he had qualified the SSLC examination. The petitioner approached the High Court yet again, to impugn the order dated 24.8.2005. At this juncture, the petitioner preferred Writ Petition No. 22324 of 2005. Having dealt with the controversy raised by the petitioner, the High Court by its order dated 13.11.2007, held that the petitioner was not entitled to absorption as a permanent employee. The learned Single Judge, while dismissing Writ Petition No. 22324 of 2005 acknowledged, that the petitioner had worked for 292 days from 8.7.1994 to 30.8.1995. Despite the aforesaid, the High Court was of the view, that the petitioner could not be given the benefit claimed by him. This conclusion was drawn because the service for 240 days in a “calendar year”, was to be determined with reference to service rendered between the 1st day of January of a particular year, upto 31st day of December of the same year. Examined on the basis of the aforesaid parameters, it was concluded, that the petitioner had not render service for a period of 240 days in a “calendar year”. It was also sought to be

concluded, that the petitioner had not worked in one branch of the bank during the period from 8.7.1994 to 30.8.1995. It was sought to be concluded, that while computing 240 days in a “calendar year” only service rendered in one branch of the Bank could have been taken into consideration. It was accordingly held, that service rendered in different branches could not be added together to calculate the period of 240 days (in a “calendar year”). As such, the claim raised by the petitioner did not find favour with the High Court in its order dated 13.11.2007.

3. The petitioner assailed the order dated 13.11.2007, passed by the learned Single Judge of the High Court (while disposing of Writ Petition No. 22324 of 2005), by preferring Writ Appeal No. 24 of 2008. The Division Bench of the High Court dismissed the aforesaid Writ Appeal on 4.11.2008. While adjudicating upon the controversy, the Division Bench referred to the judgment rendered by this Court in *Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors.* [(2006) 4 SCC 1], so as to conclude, that the petitioner was not entitled to regularization in terms of the parameters laid down by this Court.

4. We have given our thoughtful consideration to the claim raised by the petitioner. The petitioner had approached the High Court, in the first instance, by filing Writ Petition No. 45932 of 1999. The issue raised by him as far back in the year 1999 remains unsettled till today. The claim of

the petitioner as has been projected in the order passed by the respondents on 24.8.2005 was clear and unambiguous, namely, that he should be given the same benefit as was given to Shri Devaraju who had qualified the SSLC examination just like the petitioner, and despite thereof, he was absorbed as a permanent employee. The claim raised by the petitioner was primarily raised under articles 14 and 16 of the Constitution of India. The petitioner prayed for parity with the aforesaid Shri Devaraju. This claim of the petitioner was correctly appreciated, inasmuch as, the same was clearly noticed in the impugned order dated 24.8.2005. Unfortunately, even though the High Court by its order dated 14.12.2004 (while disposing of Writ Petition No. 45932 of 1999) had directed the Bank to decide the representation made by the petitioner, yet the claim of the petitioner based on a similar benefit having been granted to Shri Devaraju, was never adjudicated upon. The same claim was raised by the petitioner before the High Court in Writ Petition No. 22324 of 2005, (wherein the petitioner assailed the order passed by the Bank on 24.8.2005). Yet again, the contention remained unanswered. Thereafter, the learned Division Bench (in Writ Appeal No.24 of 2008) again rejected the claim of the petitioner without reference to his principal prayer, viz., parity with Shri Devaraju. The appeal preferred by the petitioner, assailing the order passed by the learned Single Judge in Writ Petition No. 22324 of 2005, was adjudicated upon with reference to the decision rendered by this Court

in *Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors. [supra]* even though the same had no relevance to the prayer made by the petitioner. The simple question raised by the petitioner was, with reference to the decision of the Bank in absorbing Shri Devaraju, as a permanent employee. The claim of the petitioner was founded under Articles 14 and 16 of the Constitution of India. Unfortunately, the aforesaid issue was not considered even in the second round of litigation. The matter has now been placed for our consideration, at the hands of the petitioner, through the instance Petition for Special Leave to Appeal.

5. We have given our thoughtful consideration to the claim raised by the petitioner. The learned Single Judge while deciding Writ Petition No. 22324 of 2005 acknowledged, that the petitioner had worked for 292 days from 8.7.1994 to 30.8.1995. That, coupled with the fact, that Shri Devaraju was absorbed as a permanent employee even though he had qualified the SSLC examination, in our view, should have been sufficient to examine the claim raised by the petitioner without reference to the disqualification of having qualified the SSLC examination. In *Radha Raman Samanta Vs. Bank of India*, (2004) 1 SCC 605, this Court relied upon the following observations recorded in *Budge Budge Jute Mills Co. Ltd. v. Workmen*, (1970) 1 LLJ 222 (SC), to record its observations :

from para 17 “.....Thus a *badli* workman only means a person who is employed as a casual workman who is working in place of

another. By virtue of the bipartite agreement published in Circular No. XVIII/90/20 dated 7-9-1990 of the federation of the Bank, such a *badli* worker is entitled to be absorbed if he completes 240 days of *badli* service in a block of twelve months or a calendar year after 10.2.1988. Based on the conclusion arrived at by the learned Single Judge after considering the relevant documents, the fact of the appellant's service for the required period cannot be disputed. Nomenclature of his work profile may change, but it is clear that he rendered services in a vacancy of a temporary post for more than 240 days. This is sufficient to treat him as a *badli* for the purpose of absorption.....”

It is therefore clear, that for labour related matters the terms “calendar year” and “block of twelve months” are interchangeable. It would be sufficient, if the petitioner could establish, that he had rendered more than 240 days service in a “block of twelve months”. This in our view should have been the determinating factor in a case where the consideration pertained to the consideration of an employee’s claim for inclusion in the “protected category” merely on account of having rendered 240 days service in a “calendar year”. In view of the above, we are satisfied, that the petitioner fulfilled the condition of having rendered service for 240 days in a “calendar year”. The pleadings in the instant Petition for Special Leave to Appeal, as also, the judgments and orders appended thereto do not disclose any condition to the effect, that service rendered while computing 240 days in a “calendar year”, should have been rendered in the same branch of the Bank. Keeping these factual ingredients in mind, and the fact that the petitioner has been suffering litigation since the year 1999, we feel that it would not be appropriate to require the re-adjudication of the

entire controversy all over again. In the peculiar facts and circumstances noticed hereinabove, we direct the respondent Bank to absorb the petitioner as a permanent employee in the Sub-Staff cadre on the basis of having rendered service for more than 240 days during 1994-95. The petitioner would not be entitled to any further remuneration for the period hitherto before, other than difference in emoluments, for the service already rendered by him. This decision shall not be treated as a precedent, as the same has been rendered keeping in mind the peculiar facts and circumstances of this case.

6. Disposed of in the aforesaid terms.

.....J.
(Asok Kumar Ganguly)

.....J.
(Jagdish Singh Khehar)

New Delhi;
November 24, 2011.

JUDGMENT