

State Bank of India and Another

Vs

V. Parthasarathy

With

State Bank of India

Vs

K. Sampath

Civil Appeal Nos. 4799 and 4800 of 1992

(Kuldip Singh, P. B. Sawant JJ)

09.11.1992

ORDER

1. Intervention application is allowed. Leave granted.

*Civil Appeal No. 4799 of 1992*

2. The controversy in this case is in a narrow compass. The appellant-Bank issued Staff Circular No. 42 containing an understanding reached with the Bank staff-union laying down the policy for promotion of clerks to the post of Head clerks. Clause 1(d) of the said circular states as follows:

"Employees who decline to accept Head Clerk' post at a Branch Office outside their place of service, i.e., outside their city, will again be offered the appointment only when a vacancy arises at any one of the offices within that city, provided that at the material time there is on other senior employee at that office who had earlier declined a posting outside his Branch, as a Head Clerk in which case the seniourmost employee will first be offered the appointment. Also, if an employer declines to accept the post of a Head Clerk will be considered only when a vacancy arises at his office, in the order of this seniority. His case cannot be considered for a vacancy at any of the other offices in the city."

3. It will be apparent from the above provision of the said clause that those employees who decline to accept the head clerk's post at a branch office which is outside the city in which they work will have a further option. Such employees would be offered the post of Head clerk again but only when a vacancy arises at any one of the Bank's offices within that city. This is of course subject to the condition that at the material time, there is no other senior employee who had similarly declined the first choice. The further provision of this rule and with which we are concerned in the present case is as follows. If an employee declines to accept the post of Head Clerk *at an office within the same city his case* for appointment as Head Clerk would be considered only when a vacancy arises *at his office*. This is also subject to the condition that there is no senior employee similarly situated at the

material time. If the third and the final offer for the post of Head Clerk is declined, there is permanent debarment of the promotion. One more thing necessary to be stated before we come to the facts of the present case is that the appellant-Bank has a local Head Office and at Madras. In 1972, it was split into two - the local Head Office and Madras Main Branch. In 1976-77, there was a further splitting up of the local Head Office and the Main Branch and ultimately in 1979, the Madras Local Head Office was divided into following six offices as part of the same Head Office:

- (i) Local Head Office
- (ii) Madras Main Branch
- (iii) Overseas Branch
- (iv) Regional Office, which is called Zonal office
- (v) The commercial Branch
- (vi) Siruthozhil Branch

4. There is no dispute that as far as the Clerks and the Head Clerks in all the six parts of the same Local Head Office are concerned, a common seniority list is maintained. The effect of the aforesaid arrangements for the purposes of the clause 1(d) is that "the employees" in the said clause means the employees in all the said six parts of the Local Head Office. In other words, if a vacancy for a Head Clerk occurred at any of the said six offices, it was considered to be a vacancy in one office, viz., the Local Head Office of which the other five offices were only parts.

5. It appears that respondent Parthasarathy was working as a Clerk in the madras Regional Office (now called Zonal Office) which is, as will be clear from above, a part of the Local Head Office itself. On August 21, 1973, he was offered the post of Head Clerk at Deva Kottain which is outside Madras City. This offer was declined by him. On July 1, 1980, he was offered the post of Head Clerk in the Sowkarpeth branch office in the same city, which was less than 2 kms. From his regional Office where he was working. He declined the said offer too. He was then entitled to be considered for posting as Head clerk only in his office, which meant in any of the six parts of the local Head Office, that being the third and the final offer that could be made to him. The third offer was for post of Head Clerk at the Overseas branch, and that being part of the same Local Head Office, he was bound to accept it. However, he declined the third and the final offer also, and issued a lawyer's notice to the Bank contending that the overseas branch was different from the Regional Office where he was working and, therefore, the offer given to him was contrary to the said clause 1(d). The allegations made in the notice were of course denied by the bank.

6. On September 6, 1983 one A. Nizamuddin who was working as Head clerk in the Regional Office passed away and that post became vacant. On September 24, 1983, the respondent filed a writ petition before the High Court for quashing the third and the final offer made to him on August 4, 1983, and for a direction for posting him in the Regional Office where the vacancy had occurred. The High Court took the view that the third offer made was not for the post of the Head Clerk in the same office where the respondent was working and, therefore, his refusal to the vacancy created by Mizamuddin's death in then Regional Office where the respondent was working. We are afraid this interpretation is incorrect in view of the position explained above with regard to Local Head Office which was split into six different offices which together constituted one unit. The respondent, when he was offered the third option in the Overseas branch, was offered the post in the same office

where he was working, the Regional Office being as much a part of the Head Office as the Overseas branch. By refusing to accept the said third and the final offer, the respondent had clearly exhausted all his three options and had become permanently debarred from seeking promotion to the post of Head Clerk.

7. We however, do not interfere with the appointment of the respondent to the post of Head Clerk in the Regional Office in the facts and circumstances of the case which show that a fortuitous appointment has arisen within almost a month of his refusal to accept the offer. This, however, will not be treated as a precedent nor does it affect the interpretation that we have placed on the clause 1(d) as above.

*Civil Appeal No. 4800 of 1992*

8. In this case also, the respondent Sampath was working as a Clerk in Madras Regional Office. The first offer of the post of Head Clerk was made to him on August 6, 1973 at Mudukulathur branch which is in Madras city. This was declined by him. On May 12, 1980, he was given the second offer for the post of Head Clerk at Air Force Station branch, Tambarma which was in Madras City. The third and final offer was made to him on August 4, 1983 to the post of Head Clerk in the Stationery department of the Madras Local Head Office. There is no dispute that Stationery department of the Local Head Office and the Regional Office form part of one unit, viz., Madras Local Head Office. The respondent declined this offer as well, and on January 23, 1984 filed a writ petition in the High Court for quashing the third offer and for posting him in his office, viz., Regional Office as the head Clerk. The learned Single Judge of the High court quashed the order making the third offer and allowed the petition following the earlier decision in Parthasarathy's case with which we have dealt with earlier. The Division Bench of the High Court also confirmed the order.

9. For the reasons we have given in C.A. No. 4799 of 1992, we are unable to accept the interpretation given by the High Court on clause 1(d) of Staff Circular No. 42. However, if in the present case, the respondent has already been accommodated in the post of head Clerk in the Regional Office itself, we do not intend to interfere with the same. It is nonetheless made clear that it is the interpretation that we have placed on the said clause that will prevail and not the interpretation placed by the High Court.

10. With these observations, the appeals are allowed only to the extent that the interpretation placed by the appellant-Bank on clause 1(d) of the Staff Circular No. 42 is correct and the decision of the High Court on the point is incorrect. There will be no order as to costs.

</html