

State Bank Of Travancore vs Elias Elias & Ors on 4 September, 1970

Equivalent citations: 1971 AIR 143, 1971 SCR (2) 28, AIR 1971 SUPREME COURT 143, 1971 LAB. I. C. 14, 41 COM CAS 14, 1971 2 SCR 28, 21 FACLR 342, 1971 2 SCJ 44, 1970 2 LABLJ 424

Author: J.C. Shah

Bench: J.C. Shah, Vishishtha Bhargava

PETITIONER:
STATE BANK OF TRAVANCORE

Vs.

RESPONDENT:
ELIAS ELIAS & ORS.

DATE OF JUDGMENT:
04/09/1970

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
BHARGAVA, VISHISHTHA

CITATION:
1971 AIR 143 1971 SCR (2) 28
1970 SCC (2) 761
CITATOR INFO :
D 1992 SC1100 (12)
RF 1992 SC1341 (12)

ACT:
Banking Regulation Act (10 of 1949), s. 45(5)(1)-Clause (ii)
of the first proviso-Scope of-Second proviso-Finality of
decision of Reserve Bank-Extends to what matters.

HEADNOTE:
The respondent was doing the duties of a civil agent in a
Bank. His duties were those of clerk and the salary paid to
him was that of a clerk. Pursuant to a scheme of
amalgamation prepared by the Reserve Bank under s.
45(4)(d)(ii) of the Banking Regulation Act, 1949, the Bank

was amalgamated with the State Bank of Travancore. The respondent was admitted as an employee of the State Bank and was allotted the duties of a 'civil agent'. But the State Bank directed that 'civil agents should be treated as 'subordinate staff consisting of peons, watchmen and sweepers, whose scale of remuneration was very much lower than that of the clerical staff. He submitted representations to the authorities which were rejected. The Reserve Bank of India, to which the matter was referred under s. 45(5) of the Act, held that the State Bank was justified in placing the respondent in the subordinate cadre which was a residual cadre in the State Bank.

On the question : (1) Whether the decision of the Reserve Bank was final and binding under the second proviso to s. 45(5)(i); and (2) Whether the terms and conditions of the respondent's service were not affected by the classification of his post in the subordinate cadre,

HELD : (1) The decision of the Reserve Bank whether the qualifications and experience of any of the employees of a transferor bank are the same as or equivalent to the qualifications and experience of employees of corresponding rank or status of a transferee bank is declared final by the second proviso to s. 45(5)(i) of the Act. But finality is not attached to any other matter. In the present case, however, the Reserve Bank purported to determine that the rank and status of civil agents working in the original Bank corresponded with the rank and 'status of the subordinate cadre under the State Bank. That was a matter which could not be referred to the Reserve Bank and, its decision thereon was not final. [32 C-D; 33 A-D]

(2) Under cl. (ii) of the proviso to s. 45(5) (i) a transferee bank must grant the same remuneration and same terms and conditions of service as are applicable to employees of corresponding rank or status of the transferee bank subject to the qualifications and experience of the employee being the same as or equivalent to those of such other employees of the transferee bank. That is, a person performing certain duties in a transferor bank when admitted into the service of the transferee bank must be fitted in a cadre which is equivalent in status and rank with the status and rank of the employees in the transferor bank. In grading him into the cadre of equivalent status and rank, experience and qualifications may be taken into account, but, the rank and status enjoyed by him in the transferor bank cannot be ignored. [33 F-H; 34 A-D]

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In the present case, it was conceded that the respondent satisfied the conditions as to rank, status and qualifications of a clerk in the State Bank and it was only contended that he did not have the requisite experience. On the ground of lack of experience the respondent could not be deprived of his rank and status in the transferee Bank. Also, the decision of the Reserve Bank that the subordinate

cadre was a residual cadre is not supported by any evidence. Therefore, it was not open to the State Bank to fit the respondent, who was performing the duties of a clerk in the original bank, into a subordinate cadre manned by employees performing duties, which are not clerical, but of peons and the like. [33 D-F; 34 D]

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. '1720 of 1968.

Appeal by special leave from the judgment and order dated November 2, 1967 of the Kerala High Court in Writ Appeal No. 64 of 1966.

M.C. Chagla, P. C. Bhartari and J. B. Dadachanji, for the appellant.

K. Jayaram, for respondent No. 1.

Niren De, Attorney General and I. N. Shroff, for respondent No. 2.

The Judgment of the Court was delivered by Shah, J. K. E. Elias-first respondent herein-was an employee of the Orient Central Bank Ltd. He was posted to do duty as a "Civil Agent". The Orient Central Bank Ltd. was amal- gamated with the Kottayam Bank Ltd. The amalgamated bank was named the Kottayam Orient Bank Ltd.-hereinafter called 'the K. o. Bank.' The services of Elias were transferred to the K. o. Bank. Elias continued to perform the duties of a "Civil Agent" of that Bank, and certain specific duties relating to court cases were assigned to him by the K.O. Bank. The K. o. Bank issued a circular sanctioning the salary and allowances payable to all its subordinate staff under three heads-Assistants, Clerks and Peons. The salary and allowances paid to the clerks were Rs. 46-2-50-3-80-EB-4-100 plus dearness allowance Rs. 20/-. No separate scale was fixed for "Civil Agents" and it is common ground that Elias was given the salary and allowances payable to Clerks.

Pursuant to a scheme of malgamation prepared by the Reserve Bank under s. 45(4)(d)(ii) of the Banking Regulation Act 10 of 1949, the K. o. Bank was amalgamated with the State Bank of Travancore-hereinafter called the "State Bank". Under that scheme, Elias was admitted as an employee of the State Bank and he was allotted the duties of a "Civil Agent". To fix the remuneration and the terms and conditions of the employees under the State Bank, the Board of Directors constituted a Committee to assess the qualifications of all its employees. Pursuant to a report received from the Committee, the State Bank directed that the "Civil Agents" be treated as "subordinate staff" and that their remuneration be refixed. The "subordinate staff" consisted of peons, watchmen, sweepers and employees with similar duties. Their scale of remuneration was Rs. 28-2-86-1-96-EB-1-101. The scale of remuneration of the clerical staff was Rs. 11 2-307. Elias submitted a representation to the Deputy General Mana- ger that in absorbing him in the subordinate staff he was denied the statutory guarantee of remuneration and terms and conditions of service. This representation was rejected by the Deputy General Manager by letter dated October

19, 1963, and Elias was informed that "having regard to his educational qualifications and experience it had been decided by the State Bank to place him in the subordinate cadre." Elias made a representation to the General Manager which was rejected on December 11, 1963 and he was informed that the Bank was unable to grant his request for absorption into the "clerical cadre".

Elias then moved a petition in the High Court of Kerala for a writ of certiorari or other appropriate writ quashing the orders dated October 19, 1963 and December 11, 1963, fixing his rank, in the cadre of subordinate staff. A Single Judge of the High Court dismissed the petition. He observed that since there was no post of "a Civil Agent" in the State Bank, that Bank was competent to place Elias in the subordinate cadre. The learned Judge also observed that, having regard to the educational qualifications and experience Elias was properly placed in the "subordinate cadre", and no ground was made out to quash the fixation of the rank and status based on an assessment of his qualifications and experience.

Elias appealed to a Division Bench of the High Court. During the pendency of the appeal, the State Bank applied for taking on record the decision dated September 15, 1967, of the Reserve Bank of India, holding that the State Bank was justified in not giving Elias the status of a clerk, and in placing him in the residual classification of "subordinate staff". This document was admitted on the record. The Court in allowing the appeal observed that on a consideration of the relevant circumstances, Elias was entitled to the rank and status of a clerk under the State Bank, and the order of the Reserve Bank being in violation of the statutory provisions contained in the Banking Regulation Act, 1949, the orders dated October 19, 1963 and December 11, 1963 were liable to be set aside. This appeal has been filed with special leave granted by this Court.

Two contentions were urged by the State Bank in support of the appeal:

(1) that the decision of the Reserve Bank dated September 15, 1967, was final by virtue of s. 45(5)(i) read with proviso (ii) of the Banking Regulation Act X of 1949 and could not be ignored by the Court; and (2) that the State Bank having assured to Elias the remuneration which he was drawing, a mere classification of his post in the subordinate cadre did not affect the terms and conditions of his service under the State Bank.

Section 45 of the Banking Regulation Act, 1949, by sub-s. (4) authorises the Reserve Bank in certain eventualities to prepare a scheme for reconstruction of a banking company or for amalgamation of the banking company with any other banking institution. By sub-s. (5), insofar as it is relevant, it is provided :

"The scheme aforesaid may contain provisions for all or any of the following-matters, namely

(i) the continuance of the services of all the employees of the banking company (except such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947, are specifically mentioned in the scheme) in the banking

company itself on its recon-

struction, or, as the case may be, in the transferee bank at the same remuneration and on the same terms and conditions of service, which they were getting or, as the case may be, by which they were being governed, immediately before the date of the order of moratorium :

Provided that the scheme shall contain a provision that--

(i).....

(ii)the transferee bank shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of service as are applicable to the other employees of corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the trans-

feree bank Provided further that if in any case under clause (ii)of the first proviso any doubt or difference arises as to whether the qualifications and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank, the doubt or difference shall be referred to the Reserve Bank whose decision thereon shall be final;"

In exercise of the authority under sub-ss. (4) & (5) of s. 45 of the Banking Regulation Act, 1949, the Reserve Bank prepared a scheme under which employees under the K. o. Bank were transferred to the employment of the State Bank. The terms of cl. (ii) ,of the first proviso to sub-s. (5) of s. 45 were expressly included in ,the scheme. The decision of the Reserve Bank that the qualifications and ,experience of any of the employees of the transferor bank are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank, is declared by the Act to be final. But finality is not attached to any other matter decided by the Reserve Bank. The Reserve Bank by its decision purported to determine that the rank and status of the Civil Agents working in the K. o. Bank corresponded with the rank and status of the subordinate cadre under the State Bank. The Reserve Bank of India observed that "the Civil Agent has nothing to do with the office work in the Bank just as in the case of clerks and other employees and his work is essentially different from the work of the ordinary staff in the bank". The Bank then proceeded to observe that :

"In fitting an employee of the transferor bank into the transferee bank, the rank and status of the employee as also the nature of the duties performed by the employee in the transferor bank have to be ascertained. The mere fact that the employee in transferor bank bore a particular designation either as a clerk or otherwise does not conclude the issue and that does not necessarily follow that he should, in the

transferee bank, be placed in a post having the same designation..... On examining the position the Reserve Bank of India is of opinion that the duties which the employee was discharging in the transferor bank do not relate to the duties which a clerk has to do in the office."

In the view of the Bank the duties performed by the Civil Agent were "essentially different from those of a clerk and called for a much lower degree of qualifications, skill and competence than those which a clerk normally brings to bear on his work", and since the subordinate cadre of the State Bank in which Elias was fitted was "in effect a residual classification" there was no change and the Bank was justified in placing him in that classification. It was also observed that there was "no change in the work" allotted to Elias, nor was he expected to do the work of a chaprasi or a peon and that his emoluments were better than those in the transferor bank. The fact that prior to the fitment in the transferee bank, in terms of the provisions of paragraph-15 of the Scheme, Elias was addressed as a civil clerk did not confer on him the status of a clerk in the transferee bank. These observations relate to matters which could not be referred to the Reserve Bank and the decision of the Reserve Bank thereon is not made final under the second proviso to sub-s. (5)(i) of s. 45 of the Act. Only the question whether the qualifications and experience of any of the employees of the transferor bank are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status under cl. (ii) of the first proviso is intended to be referred to the Reserve Bank. In that view the first argument advanced on behalf of the appellant must be rejected.

It is said that Elias "had studied only upto 5th Form". But that is not decisive of the corresponding rank or status in which "he could be fitted" in the State Bank. Elias was employed in the K. o. Bank as a Civil Agent. The duties of a Civil Agent were not menial. In the K. o. Bank no separate scale was prescribed for the post of a Civil Agent. The salary paid to Elias was that of a Clerk and his duties were those of a clerk. In the and there was no separate classification of the office of a Civil Agent. The subordinate cadre consisted of peons, watchmen and sweepers and of employees performing similar duties, and a Civil Agent performing duties which could not appropriately be placed in that classification. The decision of the Reserve Bank that the subordinate cadre was a residual cadre, is, in our judgment, not supported by any evidence. It was conceded before the High Court that Elias satisfied "three conditions as to the rank-, status and qualifications" of a clerk in the State Bank. It was only the said employees being the same as or equivalent to those of the first proviso to s. 45(5)(i) the transferee bank must grant the same remuneration and the same terms and conditions of service as are applicable to employees of corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee bank. The guarantee under cl.

(i) of s. 45,(5) of the Act does not cover merely the remuneration : it covers the terms and conditions of service as well . I would be a gross denial of the guarantee if the employee is not given the rank and status which he had in the transferor bank. It is, in our judgment, not open to the transferee bank to "fit" an emplo-

yee of the transferor bank performing the duties of a clerk into a subordinate cadre manned by employees performing duties which are not clerical, but of peons, watchmen, sweepers and the like.

The Banking Regulation Act, 1949, guarantees the same terms and conditions of service, and the transferee bank is entitled to "fit" the employees of the transferor bank into the corresponding- rank or status. In doing so it 'has to take into account tile qualifications and experience of the employees of the transferor bank. But in "fitting" an employee into the transferee bank, the rank and status enjoyed by an employee in the transferor bank cannot be ignored. A person performing certain duties in the transferor bank when. admitted into the service of the transferee bank- may be so "fitted" in a cadre which is equivalent in status and rank with the status and rank of the employees in the transferee bank, but in grading him into the cadre of equivalent status and rank, experience and qualifications must be taken into account. Oil the ground of lack of experience and qualifications a person cannot be deprived of his rank and status in the transferee bank. Clause (ii) to the first proviso of s. 45(5)(i) does not, in our judgment. authorise the transferee bank to "fit" an employee in' the transferee bank into a post with rank and status lower than the rank and status enjoyed by the employee in the transferor bank, To accept the contention raised on behalf of the State Bank is ill effect to defeat the guarantee relating to the terms and conditions of service under cl. (i) of s. 45(5) and the first proviso thereto.

In our judgment tile High Court was right in holding that the orders passed by the State Bank "fitting" Elias into a subordinate cadre infringed the guarantee under s. 45(5)(i) of the Banking Regulation Act, 1949.

The appeal fails and is dismissed with costs in favour of Elias.

V.P.S.

Appeal dismissed.