(2001) 01 SC CK 0082

Supreme Court of India

Case No: Civil Appeal No. 7703 of 1997

State Bank of India		APPELLANT
	Vs	
E.K. Andrew and Another		RESPONDENT

Date of Decision: Jan. 30, 2001

Citation: (2001) 89 FLR 358 : (2001) 3 JT 612 : (2001) 2 KLT 113 : (2001) 1 LLJ 1711 : (2002) 9 SCC 724 : (2001) 2 UPLBEC 1544

Hon'ble Judges: Ruma Pal, J; G. B. Pattanaik, J; B. N. Agrawal, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. This appeal by the State Bank of India is directed against the judgment of the Division Bench of Kerala High Court in Writ Appeal No. 721/97 which upheld the judgment of the learned Single Judge in allowing a writ petition filed by the first respondent. It is not necessary for us to traverse the long facts. Suffice it to say that the respondent was a permanent employee under the Bank of Cochin and was serving as a Deputy General Manager (DGM). While so continuing, he was appointed as a Chairman by virtue of a resolution of the Bank of Cochin on 18.6.1979 and that appointment was approved by the Reserve Bank of India (RBI), as required under the Banking Regulation Act, 1949. The initial period of appointment as Chairman was two years but the same was extended for a further period of three years w.e.f. 12.3.1981 and thus it continued till 17.6.1984. But, while continuing as such Chairman, on a set of charges against him, a proceeding was initiated by the RBI and ultimately by order dated 2.4.1983 he was removed from the post of Chairman. While removing him from the post of Chairman a further disqualification was also attached that he could not be associated with the management of any bank for a period of five years. This order was later on set aside and the entire proceeding had been annulled by the High Court. A suit appears to have been filed by the Bank against the respondent and a decree has been obtained, but that is of no consequence in deciding

the point in issue. The respondent approached the High Court with the prayer that he is entitled to be held an employee of the Bank of Cochin on the date the Bank stood amalgamated with the State Bank of India and therefore he is entitled to be posted against a post of Deputy General Manager under the State Bank of India. It may be stated that the Bank of Cochin stood amalgamated with the State Bank of India w.e.f. 9.8.1985. The State Bank of India as well as the Reserve Bank of India filed their objections/counter-affidavits before the High Court. The High Court however came to the conclusion that the respondent must be held to be a permanent employee of the Bank of Cochin and had a substantive right against that post notwithstanding his appointment as Chairman for a fixed period. At any rate, the order of termination as Chairman having been annulled in the eye of law, he must be deemed to be an employee of the Bank and necessarily therefore on amalgamation of the Bank of Cochin, he would be entitled to be absorbed as a Deputy General Manager under the State Bank of India, which post he held on substantive basis before his appointment as Chairman for a tenure period. The conclusion and the decision of the learned Single Judge having been upheld in appeal and the Division Bench having dismissed the appeal of the Bank, the State Bank of India is in appeal before us

2. Mr. Mohan, the learned senior Counsel appearing for the Bank, strenuously contended before us that the very fact that the respondent was appointed as Chairman under the approval of the RBI ipso facto would indicate that he did not retain any lien against his substantive post of Deputy General Manager and, therefore, the High Court erred in law in issuing the impugned direction. In support of this contention the learned Counsel placed reliance on a decision of this Court in the case of Dr. S.K. Kacker v. All India Institute of Medical Sciences and Ors. . In the said case, the question for consideration was whether a Professor of the All India Institute of Medical Sciences (for short "AIIMS") after being appointed as Director could be entitled to revert back to the post of Professor on the post of Director being terminated. This Court, on examining the relevant provisions under which the service conditions of employees of AIIMS are governed and the relevant order, came to the conclusion that it would not be open for him to go back to the parent post of Professor. But the said decision will have no application to the case in hand where neither the order of appointment as Chairman, nor the provisions of the Banking Regulation Act nor any rule of the Bank of Cochin holds that there is an automatic cessation from the substantive post of the employee the moment he is appointed as Chairman though for a fixed tenure. In the absence of any specific provision to that effect, it is difficult to sustain the contention of Mr. Mohan appearing for the Bank that there would be an automatic cessation of his service as Deputy General Manager the moment the respondent was appointed as Chairman for a fixed tenure. Mr. Mohan further contended that even under the scheme of amalgamation, the respondent would not be entitled to get the job in question as it would depend upon the very scheme itself. But, this contention does not appear to have been urged either before the learned Single Judge or before the Division Bench and therefore we are not persuaded to examine the correctness of the said submission and decide anything on that score.

3. In the aforesaid premises, we do not find any merit for our interference with the impugned judgment of the Kerala High Court. This appeal accordingly fails and is dismissed.