

(2016) 03 GAU CK 0081

In the Gauhati High Court

Case No : Writ Petition (C) Nos. 3781 and 3914 of 2014

Anil Chandra Das

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 14-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 GauLJ 389 : (2016) 6 GauLR 501

Hon'ble Judges : Ujjal Bhuyan, J.

Bench : Single Bench

Advocate : Mr. B. Banerjee, Mr. M. Nath, Mr. S.S. Dey, Mr. D.P. Borah, Mr. A Roy and Mr. A. Bhattacharjee, Advocates, for the Petitioner; Mr. N.C. Das and Mr. M.K. Misra, Advocates, for the Respondent Nos. 1 to 5

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J. - Heard Mr. B. Banerjee, learned Senior Counsel and Mr. M. Nath, learned Counsel appearing for the petitioners. Also heard Mr. N.C. Das, learned Senior Counsel assisted by Mr. M.K. Mishra, learned Counsel for the respondents.

2. Facts of both the cases being identical, those were heard together and are being disposed of by this common order.

3. For convenience, facts of WP(C) No.3781/2014 are referred to hereunder.

4. Case of the petitioners is that they were engaged as Safai Karmachari/Sub-staff in various branches under the three Regional Offices of Central Bank of India. The Regional Offices are Guwahati Regional Office, Upper Assam Regional Office and Barpeta Road Regional Office.

5. General Manager, Human Resource Development Department (Recruitment and Promotion Division), Central Bank of India ("Bank" hereinafter) on behalf of the Bank had entered into a memorandum of settlement with the All India Central Bank of India Employees Federation ("Federation" hereinafter) on

09-08-2012 wherein and where under it was agreed as a onetime measure that temporary/casual workers engaged in various branches of the Bank would be allowed to participate in the recruitment process to be initiated in the immediate future but not in the subsequent process for selection to the post of "Safai Karmachari cum Sub-staff" and "Sub-staff" on full time basis along with fresh candidates subject to fulfilment of certain conditions. Thereafter, office order dated 14-08-2012 was issued by the said authority setting out the terms and conditions mentioned in the said memorandum of settlement.

6. Following the same, Bank issued separate advertisements dated 09-11-2012 and 11-11-2012 inviting applications from eligible candidates for the post of "Safai Karmachari-cum-Sub-staff" and "Sub-staff" in the three regions of Assam viz., Guwahati, Barpeta Road and Upper Assam.

7. Petitioners fulfilled the eligibility requirement as per memorandum of settlement dated 09-08-2012 and the office order dated 14-08-2012. Petitioners therefore responded to the said advertisements and submitted their applications region-wise. It may be mentioned that one of the eligibility criteria was having worked in subordinate cadre for a minimum of 45 days service during a continuous period of 12 months. It is stated that all the petitioners possess the said eligibility criteria.

8. Thereafter interview was held in the three regions on various dates in the months of January and February, 2013. According to the petitioners, they had appeared and performed well in the interview. Petitioners were waiting anxiously for declaration of result. It was at that point of time that authorities of the Bank had issued public notices dated 05-07-2014, 06-07-2014 and 08-07-2014 cancelling the recruitment process undertaken by the bank authorities. It was mentioned that the recruitment exercise stood cancelled as per decision taken by the top management.

9. Aggrieved, the two writ petitions have been filed.

10. Contention of the petitioners is that the recruitment process was cancelled abruptly without citing any rhyme or reason. The recruitment process was a onetime exercise wherein petitioners and other similarly situated persons engaged as Safai Karmachari were allowed to participate. Because of such cancellation, petitioners may not get any further chance to participate in any recruitment process because of the age factor. The recruitment process was undertaken in other parts of the country along with the three regions of Assam. In many regions of the country including in West Bengal, the recruitment process got completed. In such circumstances, cancellation of recruitment process in the three regions of Assam is illegal and arbitrary, being in violation of Article 16 of the Constitution. Therefore, interference is called for.

11. This Court while issuing notice on 08-08-2014 in WP(C) No.3781/2014 passed an interim order to the effect that petitioners should not be ousted from their service.

12. Respondents have filed affidavit. Stand taken in the affidavit is that in view of un-expected exigencies, various branches of the Bank had to engage temporary/casual workers from time to time as per guidelines of the Bank. Such employees were allowed to work on adhoc basis and were never treated as employees of the Bank. A memorandum of settlement was entered into on 09-08-2012 between the management of the Bank and the Federation wherein it was agreed that temporary/casual workers so engaged in the Bank who fulfils the prescribed criteria would be allowed to participate in the recruitment process along with fresh candidates that would be initiated in the immediate future but not in the subsequent recruitment process. It is stated that the essential import of the terms of settlement was that the temporary/casual workmen who fulfilled the eligibility criteria as set out in the settlement would be allowed to participate in the recruitment process; such concession was a onetime measure and candidates not selected would have no right/claim to selection.

13. Thereafter circular dated 14-08-2012 was issued. To determine the number of persons required to be recruited the Zonal Offices were required to sanction number of posts for recruitment on the basis of existing manpower. Thereafter, Regional Offices were required to issue public advertisement and also to contact employment exchanges for forwarding names of candidates. After holding selection and on the basis of performance in the interview, candidates would be selected and appointed having regard to the reservation criteria. It was stated that posting of successful candidates would be made region wise to the extent of sanctioned vacancies.

14. As part of the recruitment process, advertisements in various newspapers were published and letters issued to employment exchanges for recruitment to the post of "Safai Karmachari-cum-Sub-staff" and "Sub-staff". All those casual/temporary workers engaged in the Bank for a minimum period of 45 days during a continuous period of 12 months were eligible to offer their candidature if otherwise not disqualified.

15. It is stated that during the pendency of the recruitment process, due to certain unforeseen circumstances, the recruitment process which were at different stages in different regions had to be stalled for a certain period of time. The Zonal and Regional offices were advised on 17-04-2013 to maintain status-quo of the recruitment process at whatever stage it was pending. It is stated that requirement of Sub-staff in the Branches, Regional Offices and Zonal Offices was revisited/reassessed for the financial year 2014-2015. After such reassessment it was found that the actual Sub-staff strength in certain branches as well as in certain Zonal Offices was more than the sanctioned strength in respect of those branches and Zonal Offices. Consequently, it was found that there was no need to recruit any person against the posts advertised. After re-assessment, the strength of Sub-staff working in the different branches under the three Regions of Assam were found to be in excess of the sanctioned strength. The following statement has been put forward in support of such contention :-

Region

Number of Branches

Sanctioned strength as on 31-03-2014

Actual strength as on 31-03-2014

Retirements during the year 2014-2015

No. of vacancies reported

Surplus

Barpeta Road

42

45

93

2

33

46

Guwahati

78

118

148

3

62

27

Upper Assam

48

64

78

0

27

14

16. In view of the aforesaid position since there is surplus manpower in excess of the sanctioned strength, it was decided that the exercise for recruitment in the

three Regional Offices under Guwahati Zonal Office was required to be cancelled. Thereafter the entire matter regarding cancellation of recruitment process of "Safai Karmachari-cum-Sub staff" and "Sub staff" was placed before the Board of Directors of the Bank. The Board of Directors in its meeting held on 21-06-2014 decided to cancel the recruitment process in the above three Regional Offices. Accordingly, cancellation notice was published in the newspaper.

17. After cancellation of the recruitment process, Central Bank Employees Association (North Eastern Region) approached the Assistant Labour Commissioner (Central) at Guwahati raising an industrial dispute by submitting an application on 07-07-2014. On receipt of such application, communication was made to the Bank by the office of the Regional Labour Commissioner (Central) where after Bank filed its response.

18. A settlement was arrived at between the management of the Bank and the workmen on 19-02-2015 on the following terms :-

(1) As a few of the casual workers filed writ petition before the Gauhati High Court on the same matter, till decision by the Gauhati High Court, Union would not press the case further and would maintain peaceful working environment;

(2) Union would be free to file dispute before the Conciliation Officer subject to the direction to the Gauhati High Court.

19. Apart from this, the Conciliation Officer advised the Bank management to pay minimum wages to the casual workers if covered under scheduled employment of Minimum Wages Act, 1948 as discussed during the conciliation proceeding.

20. Respondents have contended that before publication of the select list, the entire recruitment process was cancelled at the intervention of the Board of Directors of the Bank which was thereafter made public by newspaper advertisement. Reference has been made to a decision of the Bombay High Court in WP(C) No.7559 of 2014 (Vishal Nandkumar Dhadvad and others v. Central Bank of India and others) where similar issue as in the present case was raised but was turned down by the Bombay High Court. It is stated that petitioners do not have any valid ground to challenge the decision of the Board of Directors. Petitioners have not acquired any right to the posts of "Safai Karmachari-cum-Sub-staff" and "Sub-staff" by merely participating in the recruitment process. No question of violation of Articles 14 and 16 of the Constitution of India has arisen as alleged by the petitioners. Respondents have also raised other issues like a couple of petitioners being common in both the writ petitions and non-disclosure of the fact of filing petition before the Assistant Labour Commissioner in the writ petition. Contending that the writ petition is devoid of any merit, respondents seek dismissal of the same.

21. Submissions made by learned counsel for the parties are on pleaded lines. Therefore, a detailed reference to the submissions so made is considered not

necessary. However, those have been duly considered.

22. Since the entire case of the petitioners is based on the memorandum of settlement dated 09-08-2012 entered into between the Bank and the Federation, a brief reference to the same would be in order.

23. The recital of the memorandum states that considering the rapid expansion of the branch network of the Bank coupled with progressive reduction of strength of subordinate staff year after year due to large scale retirements etc. the need for recruitment of subordinate staff was felt. As a prelude to recruitment of subordinate staff, as a pro-employee initiative management converted all the permanent part time Safai Karmacharis in subordinate cadre into full time wages with the designation "Safai Karmachari-cum-Sub-Staff" w.e.f. 1st April, 2011. The Bank decided to recruit the subordinate staff with the designation, "Safai Karmachari-cum-Sub-Staff" and "Sub-staff" by following the due process. Considering the fact that some of the branches had engaged temporary/casual workers in subordinate cadre within the Bank's guidelines, the matter of giving an opportunity to such temporary/casual workers to participate in the recruitment process along with the fresh candidates for selection of "Safai Karmachari-cum-Sub-staff" and "Sub-staff" with a humane approach and also to provide an opportunity to such temporary/casual workers whose cases are sub-judice, to settle their disputes through out of Court mechanism was under discussion between the parties. After a series of discussion, it was agreed by and between the Bank and the Federation that as a onetime measure such temporary/casual workers so engaged by the various branches of the Bank would be allowed to participate in the recruitment process to be initiated in the immediate future but not in the subsequent processes for selection to the post of subordinate staff with the designation "Safai Karmachari-cum-Sub-staff" and "Sub-staff" on full time basis along with fresh candidates subject to fulfilment of the following conditions :-

(i) Such temporary/casual workers should have been engaged in subordinate cadre including as Safai Karmachari and should have put in a minimum of 45 days service during a continuous period of 12 months.

(ii) Age of the candidate should have been between 18 to 26 years when initially engaged as temporary/casual worker, relaxable in respect of eligible categories as per rules.

(iii) Age of the candidate as on the date of the said settlement should not have been more than 45 years irrespective of category.

(iv) In case of candidates who had filed cases before Courts or Tribunals seeking permanent absorption in the Bank service and such cases being pending, the candidates were required to unconditionally withdraw such cases prior to applying for participating in the recruitment process.

(v) Where there are awards or judgments of any Tribunal or Court directing the

Bank to consider any candidate for such absorption, such candidate would be considered and allowed to appear in the interview process initiated pursuant to the settlement irrespective of the age and other eligibility criteria provided under the settlement subject to the only condition that the age of the candidate at the time of interview should not be above 60 years.

(vi) Recruitment would be done through personal interview of the eligible candidates by committees to be constituted by the management.

24. It was clarified that the above was a onetime measure and those not responding or those having participated but not selected would have no further claim for absorption in the Bank.

25. It was thereafter that the recruitment process was undertaken wherein petitioners had participated.

26. The reason given for cancellation of the recruitment process as is discernible from the counter affidavit of the respondents is that there are surplus workmen in the three Regional Offices as against the sanctioned posts. It is stated that in Barpeta Road Region, the surplus Sub-staff strength was 46; in Guwahati Region it was 27 and in Upper Assam Region it was 14. Therefore in view of there being surplus manpower in the three Regional offices, it was decided to cancel the recruitment process. Ultimately Board of Directors took such a decision on 21-06-2014.

27. Question for consideration is whether such cancellation of recruitment process is legally valid and tenable having regard to the memorandum of settlement dated 09-08-2012 entered into between the parties.

28. To answer this question it would be necessary to once again revert back to the memorandum of settlement dated 09-08-2012. It is clearly stated therein that as a prelude to recruitment of subordinate staff, the management as a pro-employee initiative had converted all the permanent part time Safai Karmacharis in subordinate cadre into full time wages with the designation "Safai Karmachari-cum-Sub-staff" and "Sub-staff" w.e.f. 01-04-2011. It was after such conversion that the Bank decided to recruit the subordinate staff with the designation "Safai Karmachari-cum-Sub-staff" and "Sub-staff" and to give an opportunity to the temporary / casual workers working in the branches in subordinate cadre to participate in such recruitment process with relaxed norms as a onetime measure.

29. Therefore, cancellation of the recruitment process on the ground that there were surplus subordinate staff as against the sanctioned cadre strength in the three Regional Offices does not at all appear to be justified and tenable.

30. There is another aspect of the matter. Having regard to the scheme of the Industrial Disputes Act, 1947, settlement arrived at between employer and employee is always placed at a higher pedestal than even an award passed after adjudication. The Hon"ble Supreme Court in the case of *Herbertsons Limited v.*

Workmen reported in (1976) 4 SCC 736 had laid down the above proposition which has been reiterated in P. Virudhachalam v. Management of Lotus Mill, reported in (1998) 1 SCC 650.

31. Not only that, by virtue of the said settlement, the Bank had lured those workmen who had instituted cases before Courts and Tribunals for absorption in the service of the Bank to withdraw their cases unconditionally to entitle them to appear in the recruitment process as a onetime measure.

32. In the light of the above factual scenario, it may not be incorrect to take the view that the memorandum of settlement dated 09-08-2012 entered into between the management and the workmen is binding on both the parties. In such a case, the unilateral decision of the Board of Directors to cancel the recruitment process which was initiated pursuant to such settlement is not justified and cannot be sustained.

33. Referring to the Bombay High Court decision relied upon by the respondents, it appears that the Bombay High Court had proceeded on the basis that petitioners cannot base their case on the doctrine of legitimate expectation. It was held that selection did not confer any indefeasible right to appointment. (In the Bombay case, it is stated that petitioners therein were selected following the recruitment process undertaken). As a general proposition there cannot be any dispute that selection per se does not confer any right to appointment. But on the stated facts of the present case and for the reasons indicated above, with great respect, I am unable to accept the view taken by the Bombay High Court.

34. Having regard to the core issue before the Court arising out of this litigation as discussed above, I am of the considered opinion that the technical objections raised by the respondents need not detain the Court from adjudicating the same.

35. Consequently, for the reasons stated above, impugned decision of the respondents to cancel the recruitment process is set aside and quashed. Respondents are now directed to complete the recruitment process initiated pursuant to the memorandum of settlement dated 09-08-2012 in respect of Barpeta Road, Guwahati and Upper-Assam Regional Offices of the Central Bank of India without any further delay and at any rate within a period of 4 months from the date of receipt of a certified copy of this order.

36. Both the writ petitions are accordingly allowed but without any order as to cost.