

(2015) 03 P&H CK 0179
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 16912 of 2014

Anupam

APPELLANT

Vs

Institute of Banking Personal Selection (IBPS) and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2015) LabIC 1928 : (2015) 4 SCT 65

Hon'ble Judges : Deepak Sibal, J.

Bench : Single Bench

Advocate : Vikram Goswami, for the Appellant; Ayush Gupta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Deepak Sibal, J.—Through the present writ petition, the petitioner prays for the issuance of a writ in the nature of mandamus directing respondent No. 1-Institute of Banking Personal Selection (hereinafter referred to as "the Institute") to consider his candidature as per merit for appointment as a Probationary Officer under the Other Backward Class quota after taking into account the Other Backward Class (OBC) Certificate issued by the Competent Authority.

2. In pursuance to an advertisement the petitioner applied under the Other Backward Class category for appointment to the post of Probationary Officer/ Management Trainee in various Banks mentioned therein. The petitioner had applied online. Thereafter, the petitioner appeared in the online examination held on 19.10.2013 and having successfully cleared the same he was called for interview on 04.01.2014 at Rohtak. In pursuance to such interview call the petitioner appeared for the interview and since the petitioner had applied under the OBC category he was asked to show the original certificate with regard to his OBC status. On his inability to do so, as per the terms of the advertisement, his candidature was rejected. It is the case of the petitioner that on a later date he had procured a fresh certificate certifying him to be a member of the OBC

category which was as per the terms of the advertisement and had submitted the same to respondent No. 2-Bank but in spite of the same his candidature was not considered. On rejection of his candidature, the petitioner has approached this Court seeking the issuance of directions as noted above.

3. I have heard learned counsel for the parties and with their able assistance have gone through the record of the case.

4. Through the present writ petition, the petitioner seeks the issuance of a direction to respondent No. 1-Institute. A scrutiny of the contents of the writ petition leave no room for doubt that the petitioner has made no averment so as to how the respondent-Institute would come under the definition of "State" as per the Article 12 of the Constitution of India and thus, amenable to the writ jurisdiction of this Court. On the other hand, the un-rebutted stand taken by the respondent-Institute to oppose the writ petition forcefully projects that the respondent-Institute is not covered under the definition of "State" under Article 12 of the Constitution of India and further that as it does not have any public function, it would not be amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. It is submitted that respondent No. 1-Institute is only a test conducting agency which provides service to various Banks and other organizations and being a purely private organization does not fall under the definition of "State" under Article 12 of the Constitution of India. To buttress the above submission, the respondents rely upon two Division Bench Judgments of the High Court of Judicature at Bombay which are (i) Writ petition (L) No. 1042 of 2014 decided on 07.05.2014 filed as "Mohan Laxman Gamare versus Institute of Banking Personnel Selection (IBPS) and another" and (ii) Writ Petition No. 2616 of 2014 decided on 18.11.2014 titled as "Shri Arun Kumar Sharma versus The Director, Institute of Banking Personnel Selection and another".

5. In Mohan Laxman Gamare's case (supra), the Division Bench of the Bombay High Court on the issue of maintainability of a writ petition against the respondent No. 1-Institute has held as under:-

"We are of the view that Respondent No. 1 Company is not a "State" within the meaning of Article 12 of the Constitution of India. It does not have any public function and it is not amenable to the writ jurisdiction of this court under Article 226 of the Constitution of India. In view of this, we do not think that it is necessary to go into the merits of the case. Hence, writ petitions are dismissed."

6. Similarly, in Sh. Arun Kumar Sharma's case (supra) another Division Bench of the Bombay High Court while considering the same issue has held as under:-

" In view of order dated 13.11.2014 in Writ Petition No. 2617 of 2014-Shri Manoj Kumar vs. The Director, Institute of Banking Personnel and another, which squarely applied to the present facts and circumstances and for the same reason, the present petition is dismissed as not maintainable as the Respondent No. 1 is not "State" within the meaning of Article 12 of the Constitution of India." 7. In

view of the above two judgments of the Bombay High Court, coupled with the fact that no material has been placed on the record or even an averment made to the contrary by the petitioner so as to how respondent No. 1-Institute would come under the definition of "State" under Article 12 of the Constitution of India, I unhesitatingly hold that the present writ petition against respondent No. 1-Institute would not be maintainable in this Court under Article 226 of the Constitution of India.

8. Even otherwise, after have heard the counsel for the petitioner, I find that even on merits the petitioner has no case. The relevant terms and conditions governing the interview as spelt out in the advertisement are reproduced below:-

"While appearing for the Interview, the candidate should produce valid prescribed documents given below.

List of Documents to be produced at the time of interview

(as applicable)

The following documents in original and self attested photocopies in support of the candidate's eligibility and identity are to be invariably submitted at the time of interview failing which the candidate may not be permitted to appear for the interview.

(i) Printout of the valid Interview Call Letter.

(ii) Valid system generated printout of the online application form registered for CWE-PO/MTs-III.

(iii) Proof of Date of Birth (Birth Certificate or SSLC/Std. X Certificate with DOB).

(iv) Photo Identity Proof as indicated in Point G of the advertisement/

(v) Marksheets and Certificates for Graduation or equivalent qualification etc. Proper document from Board/University for having declared the result on or before 01.07.2013 has to be submitted.

(vi) Caste Certificate issued by competent authority in the prescribed format as stipulated by Government of India in case of SC/ST/OBC category candidates.

In case of candidates belonging to OBC category, certificate should specifically contain a clause that the candidate does not belong to creamy layer section excluded from the benefits of reservation for Other Backward Classes in Civil post and service under Government of India. OBC Caste certificate containing the Non-Creamy layer clause should be issued during period 01.04.2013 to 31.03.2014. Caste Name mentioned in certificate should tally letter by letter with Central Government list/notification.

Candidates belonging to OBC Category but coming under creamy layer are not entitled to OBC reservation. They should indicate their category as General in the online application form."

[emphasis supplied by me.]

9. In view of the above reproduced Clause (vi) of the advertisement, the caste certificate to be produced at the time of interview was required to be issued during the period 01.04.2013 to 31.03.2014. The advertisement is admittedly dated 10.07.2013 and the date of interview was 05.01.2014. Thus, the petitioner had adequate notice and enough time of more than six months to obtain the caste certificate as required which he admittedly did not have at the time of interview as the certificate produced by him through the interview was issued on 13.10.2004. The petitioner cannot be allowed to take benefit of his own wrong. Further, no power of relaxation to the terms and conditions governing the interview have been shown to me and it is the un-rebutted case of the respondent No. 1-Institute that this criteria has been applied by them to one and all. Thus, in the facts and circumstances of the case, even on merits, the petitioner deserves no relief.

10. A Division Bench of the Allahabad High Court in Writ-A No.- 20547 of 2014 decided on 09.04.2014 while considering the same advertisement and a similar issue, has held as under:-

"Here it would be relevant to place on record that the advertisement is dated 10.07.2013 and the date of interview was announced in December, 2013, fixing 05.01.2014. The petitioner had enough time of more than six months to obtain the Caste Certificate as indicated under the terms of advertisement itself. The petitioner therefore made an attempt at the last moment himself.

Consequently, there is no merit in the writ petition. The writ petition is dismissed."

11. To the same effect is a judgment by the Madras High Court dated 29.04.2014 in W.P. (MO) Nos. 6147 to 6150 of 2014, wherein while considering a similar issue it has been held as under:-

"In this case, the petitioners participated in the selection process to the post of Probationary Officers. For selecting to the said post, a notification was issued by the respondents on 10.07.2013. In the said notification clause (E) deals with interview. In the said clause, the respondents have specifically stated as to what are all the documents to be produced at the time of interview. Under sub clause (vi) of the said instructions, it has been stated as follows:-

"Caste Certificates issued by the competent authority in the prescribed format as stipulated by Government of India in case of SC/ST/OBC Category candidates.

In case of candidates belonging to OBC category, certificate should specifically contain a clause that the candidate does not belong to creamy layer section excluded from the benefits of reservation for Other Backwar Classes in Civil post and Services under Government of India. OBC Caste certificate containing the Non-creamy layer clause Name mentioned in certificate should tally letter by letter with Candidates belong to OBC category but coming under creamy layer

are Candidates belong to OBC category but coming under creamy layer are not entitled to OBC reservation. They should indicate their category as General in the online application form."

Further, it is also stated that candidates failing to submit those certificates cannot be permitted to appear for the interview.

7. From the above said conditions imposed in the notification. It can be seen that the petitioners have to obtain the O.B.C. Certificates containing the non creamy layer clause issued between the period from 01.04.2013 to 31.03.2014. If the said certificates is not produced at the time of interview, then, certainly the petitioners cannot seek any later indulgence, because having accepted the terms and conditions they have applied to the said post.

8. In my considered view, the petitioners are estopped from contending that the certificate obtained by them at a later point of time should have been considered for the selection to the post. Needless to say that the persons who participated in the selection process after having accepted the terms and conditions of the selection, cannot challenge the said process subsequently.

9. Therefore, I am of the view that the petitioner's claim in all these writ petitions cannot be considered in the light of the conditions imposed in the notification issued by the respondents. Accordingly, I find no merits in these writ petitions. Consequently, all the writ petitions are dismissed and the miscellaneous petitioners are also dismissed."

12. To the same effect is another judgment by the Patna High Court wherein the in case of "Mukut versus The Indian Overseas Bank and others", Civil Writ Jurisdiction Case No. 10222 of 2014, decided on 05.11.2014, it has been held as under:-

"The issue before this Court is whether the respondents committed error of law in rejecting candidature of the petitioner as he did not submit the requisite caste certificate issued between 01.04.2013 to 31.03.2014 prescribed in the guidelines. The other issue is whether the guidelines provided any relaxation to the candidate to submit such certificate beyond the prescribed period.

In order to appreciate the issue, it would be appropriate to notice the relevant extract of the guidelines enumerated in Clause E (INTERVIEW) of the advertisement issued by the IBPS, contained in Annexure 1 to the writ petition. Clause E mentions that "while appearing for the interview, the candidate should produce valid prescribed documents in original and self attested photocopies in support of the candidate's eligibility and identity to be submitted invariably at the time of interview failing which the candidate may not be permitted to appear for the interview." Again sub-clause (vi) of Clause E mentions that "OBC caste certificate containing the Non-creamy layer clause should be issued during the period 01.04.2013 to 31.03.2014."

It is evident from perusal of Clause E of the guidelines given in the

advertisement itself that the candidates were required to produce the OBC caste certificate at the time of interview issued between 01.04.2013 to 31.03.2014. The guidelines do not vest any power to the authorities to relax the conditions mentioned in Clause E. Respondent No. 3 has rightly relied upon the orders of Allahabad High Court and the Madras High Court. In the said cases, the candidate did not produce the caste certificate issued between 01.04.2013 to 31.03.2014 at the time of interview. However, he subsequently obtained the caste certificate. Rejecting the contention of the petitioner, the Hon''ble Allahabad High Court observed that the authorities rightly rejected the candidature as the caste certificate was not produced at the time of interview which was necessary in view of the guidelines. Again the Hon''ble Madras High Court in its order contained in Annexure B states that the guidelines lays down that certain documents are necessarily to be produced at the time of interview. Learned counsel for the petitioner submits that neither the Allahabad High Court nor the Madras High Court has considered Annexure 6 which is letter dated 25.04.2014, issued by the Human Resources Development Department, which impliedly permits even production of requisite documents, if the same has not been produced at the time of interview.

Having regard to the facts and circumstances of the case, particularly in view of the order passed by the Allahabad High Court and Madras High Court, I am not inclined to pass any positive direction. However, if the petitioner files fresh representation bringing Annexure 6 to the notice of the respondent Bank, the same would be considered within two months from the date of receipt of a copy of this order.

Nothing should be considered as this Court has expressed any opinion on the merits of the case."

13. I concur with the above opinions rendered by the Allahabad High Court, Madras High Court and the Patna High Court.

14. Learned counsel appearing on behalf of the petitioner has relied upon a full Bench decision of the Delhi High Court titled as Vibhu Kapoor Vs. Council of Indian School Certificate Examination and Another, .

15. I have gone through the judgment of Full Bench wherein on the basis of material placed on the record and the Memorandum of Association and Rules and Regulations, the Indian School Certificate Council was held to be "State" within the meaning of Article 12 of the Constitution of India. While holding so, the Full Bench of the Delhi High Court considered various provisions of the rules and regulations and memorandum of association of the society therein. After holding that the society was impregnated with governmental character, was discharging a public function of imparting education, had entered into an arrangement with the Government to enable it to discharge its public function for imparting education, had been statutorily recognized under Section 2(S) of the Delhi Education Act as a body of person or a society recognized by the Government to discharge public

functions, the rules and regulations of the society therein showing governmental supervision over the same and finding that two of its members were being nominated by the Government, held it to be amenable to the writ jurisdiction under Article 226 of the Constitution of India.

16. In view of the facts discussed earlier, the present case is completely distinguishable from the facts of that case.

17. In view of the above, finding no merit in the present writ petition, the same is ordered to be dismissed.

18. No costs.