
(2019) 06 CAL CK 0017

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 7480 (W) Of 2019

Apratim Mukherjee

APPELLANT

Vs

State Bank Of India & Ors

RESPONDENT

Date of Decision : 18-06-2019

Acts Referred:

Citation : (2019) 06 CAL CK 0017

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Ratul Biswas, Paramita Roy, Subrata Kumar Sinha

Final Decision : Disposed Off

Judgement

Pursuant to an advertisement published by the State Bank of India, Central Recruitment and Promotion Department, Corporate Centre, Mumbai for recruitment of probationary officers in the bank the petitioner made an online application in the general category.

He was selected for online preliminary examination to be held on 1st July, 2018. Being successful in the said examination the petitioner was shortlisted for appearing in the online main examination to be held on 4th August, 2018.

The petitioner was thereafter informed that based upon his performance in the online main examination he was found suitable for appearing in the interview and group exercise. The petitioner was directed to appear on the scheduled date and venue as indicated in the interview intimation. The petitioner duly appeared in the said interview.

By a letter dated 30th October, 2018 the petitioner was informed by the Local Head Office of the State Bank of India, New Delhi that he was provisionally selected for appointment as Probationary Officer in the State Bank of India and allotted "New Delhi circle". It was mentioned in the said letter that his appointment was subject to satisfactory completion of the appointment

formalities including medical examination, which will be conveyed to him separately.

By a communication dated 16th November, 2018 the petitioner was directed to report to the Local Head Office, New Delhi on 10th December, 2018 for medical examination. The petitioner duly reported for medical examination on the scheduled date and time.

During medical examination the petitioner was informed that in normal course candidates having negative power in the eye at the maximum of minus eight (-8) are considered fit for appointment but as the petitioner has minus nine (-9) power in the left eye and minus seven (-7) power in the right eye along with cylindrical power he was advised to undergo lasik surgery in order to get appointment in the bank. The petitioner was advised to continue eye treatment and report back after a month for reexamination.

The petitioner submits that he consulted an ophthalmologist who advised him not to undergo the lasik surgery as there was some problem in his retina. Although the petitioner was advised not to undergo surgery but the doctor continued with his eye treatment.

As per the instruction of the respondent authority the petitioner reported to the bank after one month for reexamination of his eye. On 1st January, 2019 the petitioner sent a letter to the bank via e-mail indicating that he had undergone treatment in Kolkata and reported to the Local Head Office of the bank, New Delhi for reexamination of his eye.

On 2nd January, 2019 the petitioner was informed by the bank via e-mail that he was declared temporarily unfit by the bank's Medical Officer and advised to contact the said Medical Officer.

The petitioner submits that he contacted the Medical Officer of the bank who informed the petitioner that he will not be able to help him in any manner.

The petitioner submits that in the advertisement there was a provision for reservation of vacancies for persons with disabilities. There was reservation for candidates with visual impairment and candidates who suffer from blindness or low vision. The petitioner is better off than candidates who were blind or had low vision. He submits that after treatment the power of his eye has reduced considerably and he does not have any difficulty in performing his duties after correction of his vision by wearing spectacles. The petitioner being eligible in the selection process ought to be issued letter of appointment.

Learned counsel appearing on behalf of the respondent bank submits that the writ petition is liable to be dismissed as the High Court at Calcutta does not have the territorial jurisdiction to entertain the same. He submits that the recruitment advertisement was published by the bank from their corporate office at Mumbai. The petitioner was selected for being appointed in the New Delhi circle of the bank. The medical examination of the petitioner was held at New Delhi. The

petitioner was directed to report for reexamination of his eye at New Delhi.

The general information given under Clause 16 of the recruitment advertisement clearly mentions that any legal proceeding in respect of any manner of claim or dispute arising out of the advertisement and/or an obligation in response thereto can be instituted only in Mumbai and the Courts/tribunals/forums at Mumbai only shall have sole and exclusive jurisdiction to try any cause/dispute.

The learned counsel submits that the petitioner applied pursuant to the said advertisement and accordingly he is bound by the said clause according to which the Courts/tribunals/forums in Mumbai have exclusive jurisdiction to decide the issue.

He submits that no part of the cause of action arose at Kolkata and none of the respondents have their office located at Kolkata. He prays for dismissal of the writ petition on the ground of lack of territorial jurisdiction of the Hon'ble High Court at Calcutta to decide the issue.

In response to the objection raised by the learned counsel appearing on behalf of the bank the petitioner submits that the advertisement in question was published online and was available all over India. The initial examinations (preliminary and main) were conducted online. The petitioner being a permanent resident of Kolkata applied for the job in question from Kolkata. He appeared in the online examinations from Kolkata. The petitioner was directed to appear in the interview and group exercise at Kolkata. According to the petitioner a substantial part of the cause of action arose at Kolkata and accordingly the Calcutta High Court does have territorial jurisdiction to decide the issue.

In the aforesaid context the petitioner relies upon a judgment delivered by this Court in the case of Pankaj Panwar -vs- Lalit Kala Academy & Ors. reported in AIR 2015 Cal 67.

After hearing the submissions made on behalf of both the parties it appears that the advertisement in question was indeed published in the official website of the State Bank of India which is available over the internet. The said advertisement is accessible to any person all over the country.

The petitioner being a permanent resident of Kolkata applied online in response to the said advertisement. The petitioner appeared in the online preliminary as well as the online main examination sitting in Kolkata. The petitioner was directed to appear in the interview and group exercise which was held in Kolkata. All the communications were made to the petitioner online and the same was accessed by the petitioner from Kolkata. To sum up, all the incidents starting from making the application to clearing the examinations and being declared successful happened in Kolkata.

As regards the clause mentioned in the recruitment advertisement regarding institution of proceedings in the Courts/tribunals/forums at Mumbai it can be said that there is hardly any dispute which arises out of the said advertisement. The

selection process pursuant to the said advertisement is already over. The petitioner has been declared successful and the letter of appointment is to be issued subject to clearing the medical examination. The issue at this stage relates to non-issuance of the letter of appointment for not clearing the medical test. The dispute does not relate to the advertisement any longer and accordingly the restriction of filing applications only at Mumbai will not apply in the facts and circumstances of the instant case.

In the age of advanced technology when advertisements/notices are published online the same becomes accessible from each and every corner of the globe which has free access to the internet. Often the authorities prefer online mode of application to avoid piling up of huge stacks of paper, thus moving a step forward towards greener environment. Going paperless is a welcome trend and should be encouraged.

In such a situation the cause of action may arise at several places at the same time. Then the terms and conditions of the advertisement/notice surely become relevant. But if the jurisdiction of the forum as mentioned in the advertisement/notice is located at such a place that it would be difficult and inconvenient for an aggrieved person to seek justice then it would be open to the said person to exercise his right in accordance with the principles of forum conveniens.

It is settled law that a litigant has the right to approach the Court where part of his cause of action arises. The cause of action consists of the entire bundle of facts which gives cause to enforce the legal right and seek redress in a court of law. The choice of the forum will be open to him. It is the duty of the Court to find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action. The same does not tantamount to forum shopping. The main factor to be considered is the place where the alleged cause of action arise and the place of affectation of the right of the aggrieved party. Right to constitutional remedy is a fundamental right as enshrined in the Constitution of India. Situs of the forum should not stand as a hindrance in enforcing such right.

The forum selection clause in the recruitment notice will not have the effect of exclusion of jurisdiction of the court where the cause of action actually arises.

The submission of the respondents that the writ petition will not be maintainable here as none of the respondents are located within the jurisdiction of the Calcutta High Court does not hold good in the facts and circumstances of the instant case as it is settled law that in order to maintain a writ petition the petitioner has to establish that his legal right has been infringed within the territorial limits of the court's jurisdiction irrespective of the fact whether the offices of the respondents are situated within the territorial limits of the court or not. The decision mentioned hereinabove supports the case of the petitioner.

From the aforesaid chain of events it can be concluded that not only a substantial part but an integral part of the cause of action arose at Kolkata and the High Court at Calcutta does have territorial jurisdiction to entertain the issue.

It appears from records that even though the petitioner was successful all along but the appointment letter was not issued in his favour as he could not clear his medical examination. The communication of the bank dated 26th February, 2019 clearly mentions that the petitioner was declared provisionally unfit on account of high myopia and he was asked to report back for review within a month's time by the bank's Medical Officer but the petitioner did not report back to the Medical Officer for review and reexamination of his eye.

The petitioner has categorically mentioned in his writ petition that he went to Delhi for reexamination of his eye. The Medical Officer of the bank informed the petitioner that he has to undergo lasik surgery to get his job. The petitioner has obtained opinion from the eye specialist who advised the petitioner against undergoing the said surgery. The petitioner asserts that he has undergone treatment and the condition of his eye has improved. The petitioner submits that he is capable of performing his duties by wearing spectacles.

The bank is only required to see that the petitioner can perform his duties normally by wearing spectacles or contact lens as the case may be. There is no reason why the Medical Officer of the bank is insisting on undergoing lasik surgery.

The advertisement has provision for candidates with blindness or low vision by providing reservation for them.

In my opinion, in these hard days with increasing unemployment, instead of throwing away the petitioner on account of high myopia when he has cleared his preliminary, main examination as well as the interview and has become successful for appointment in the post in question, an opportunity should be given to the petitioner to get himself reexamined. It cannot also be lost sight of the fact that the petitioner cleared the preliminary and the main examination online, i.e. the petitioner is able to work long hours at the computer even with high myopia. The bank can examine the petitioner to ensure whether he can perform his duties after correction of his vision by wearing spectacles, contact lens or the like.

This order is being passed on the expressed submission made by the petitioner that though the petitioner has got high myopia but after correction the petitioner has a perfect vision of a normal eye. It has been categorically submitted that the vision of the petitioner will not create any hindrance in the normal day to day business activity of the bank.

In view of the discussions made hereinabove the instant writ petition is disposed of directing the Medical Officer of the bank to reexamine the medical fitness of the petitioner and to assess whether the petitioner will be able to function normally upon correction of his vision.

The aforesaid exercise shall be conducted by the bank within a period of six weeks from the date of communication of a copy of this order. In case the

petitioner is successful the bank will take steps to issue appointment letter in favour of the petitioner at the earliest.

If the petitioner fails to clear the medical test, the bank will explore the possibility of accommodating the petitioner in the category of candidates having low vision. The bank may also consider entrusting the petitioner with such duties which may not cause any strain in his eyesight.

With the aforesaid observation W.P No. 7480 (W) of 2019 is disposed of accordingly.

There will, however, be no order as to costs. Urgent Photostat certified copy of this order be supplied to the parties, if applied for.