(2014) 04 PAT CK 0030

In the Patna High Court

Case No : C.W.J.C. No. 457 of 2014

Ashish Kumar APPELLANT

Vs

The Chairman-cum-Managing Director RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Citation : (2014) 3 PLJR 511

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Durgesh Nandan, Advocate for the Appellant; Kaushlendra Kumar Sinha, Advocate for the Respondent

Judgement

Chakradhari Sharan Singh, J.—Whether son of an officer of a nationalized bank, having annual income more than 6 lacs per annum for three consecutive years will fall in "creamy layer" for the purpose of determining his claim for reservation in service available to Other Backward Classes, is precisely the question involved in the present writ application. Facts are not at all in dispute. The State Bank of India came up with an advertisement No. CRPD/P.O./2012-13/04 on 23.1.2013 inviting online applications between 30.1.2013 to 23.2.2013 for recruitment of Probationary Officers in the Bank against 1500 vacancies under different categories. Clause 3 of the advertisement provided that candidates belonging to OBC category but coming in the "creamy layer", are not entitled to OBC reservation and age relaxation. The petitioner submitted his application online claiming OBC status. The petitioner''s candidature was, on the basis of his application considered as OBC (non-creamy). The petitioner accordingly appeared in the written examination and was declared successful. He thereafter, participated in group discussion and interview test and his name was displayed on the Bank''s website as selected candidate. The result was published in Employment News also.

2. The petitioner was thereafter, asked to call on the Assistant General Manager (HR), Local Head Office, Mumbai for the purpose of medical examination/

verification of documents by 27.8.2013. It was indicated in the said letter dated 10.8.2013 that if it was not convenient for him to complete the process of medical examination/verification of credentials at the said address, the petitioner could complete the same at the administrative office/LHO (Local Head Office) convenient to him. In response to the said letter dated 10.8.2013, the petitioner requested the Assistant General Manager (HR), State Bank of India, Local Head Office, Patna to get his medical examination and verification of certificates done at Patna Local Head Office. Accordingly, he was asked to appear before the Assistant General Manager (HR), State Bank of India, local Head Office, Patna for medical examination and verification of certificates on 22.8.2013. The petitioner in pursuance thereof appeared. Thereafter, whereas other candidates were given appointment letters, no appointment letter was issued to him by the cut-off date fixed by the Bank for that purpose i.e. 16.9.2013. The petitioner made an online application to AGM (HR), SBI, Local Head Office, Bandra Kurla Complex, Bandra (E) Mumbai making enquiry as regards issuance of appointment letters in his favour, in response to which the petitioner received a communication from the Assistant General Manager, State Bank of India, Mumbai that he was not eligible for selection for Probationary Officer post under the OBC category.

3. This is to be noted that in order to claim the benefit of reservation Under OBC category, the petitioner had submitted a certificate issued by the Circle Officer, Sadar Darbhanga to the effect that the petitioner did not come within "creamy layer". However, in the said certificate, it was mentioned at the bottom that annual income from salary was rupees seven lakh three thousand, which fact is not in dispute.

4. The petitioner''s case is precisely based on the claim that income from salary is not required to be taken into account for the purpose of determining whether he would fall in creamy layer or not. The petitioner''s stand in this regard can be quoted from paragraph No. 23 of the writ application which reads thus:--

"That as per provision contained in G.1 Deptt. of per and Trg. No. 36012/22/93 Estt. (SCT) dated 8 Sept., 1993, the salary of the petitioner is exempted from the ceiling of the income tax (sic) the purpose of appointment under OBC."

5. Before I deal with the conditions applicable for exclusion of a candidate belonging to Other Backward Class on the ground of falling within creamy layer, I consider it appropriate to refer to this undisputed fact that the petitioner''s father is an officer in the State Bank of India, which is the public sector undertaking and his annual income (gross salary) for three consecutive years is as follows:--

6. Appendix-1, which Schedule to G.I. Department of Personnel and Training, OM No. 36012/22/93-Estt. (SCT) dated 8.9.1993 gives the list of Persons/Sections excluded from the benefit of reservation under OBC category. It has altogether six classes, namely, I-Constitutional post, II-Service category, III-Armed forces including para military forces, IV-Professional Class and those engaged in trade and industry, V-Property owners, VI-Income/wealth test.

Category-II has three classes which are:--

A. Group A/Class-I Officers of All India Central and State Services (direct recruitment),

B. Group B/Class-II Officers of the Central and State Services (direct recruitment), and

C. Employees in public sector undertaking etc.

7. For the purpose of present dispute sub-category ''c'' of category-II is relevant which is being quoted hereinbelow:--

"C. Employees in Public Sector Undertakings etc.--The criteria enumerated in A & B above in this Category will apply mutatis mutandis to officer holding equivalent or comparable posts in PSUs, Banks, Insurance Organizations, Universities, etc. and also to equivalent or comparable posts and position under Private employment, pending the evaluation of the posts on equivalent or comparable basis in these Institutions, the criteria specified in category-VI below will apply to the officers in these Institutions."

8. It would be relevant to mention here and which is admitted that though it has been provided that criteria enumerated in A & B is to be applied mutatis mutandis to officers holding equivalent or comparable post in PSUs, banks etc. but evaluation of the posts in PSUs, Banks Insurance Association etc. for the said purpose has so far not been done. Therefore, in terms of the category ''C'' as quoted above, the criteria specified in category-VI is to be applied to the Employees in Public Sector Undertakings, Banks etc.

9. From Appendix-1 it would appear that criteria-VI has been applied to employees in public sector undertakings, professional class and those engaged in trade and industry. Criteria-VI lays down the income/wealth test and reads thus:--

"VI. Income/Wealth Test. Son(s) and daughter(s)--

(a) Persons haying gross annual income of Rs. 1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Act for a period of three consecutive years.

(b) Persons in Categories-I, II, III and V-A who are not disentitled to be benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above.

Explanation.--(i) income from salaries or agricultural land shall not be clubbed;

(ii) The income criteria in terms of rupee will be modified taking into account the change in its value every three years. If the situation, however, so demands, the interregnum may be less."

10. As per income/wealth test, sons and daughters of persons having gross

annual income of six lacs (earlier it was one lac and now enhanced to six lacs) or above or possessing wealth above the exemption limit as prescribed in the wealth Tax Act for a period of three consecutive years fall within "creamy layer". There is an explanation to this test which provides "income from salary or agricultural land are not to be clubbed".

11. As has been noted above, the entire emphasis in his submission by learned counsel for the petitioner had been that income from'' salary cannot be a criteria for determining "creamy layer" status of a person. This submission is precisely based on this Explanation-I to Income/Wealth test. According to learned counsel for the petitioner, in view of this explanation, income from salary or agriculture land is not to be taken into account for the purpose of determining the creamy layer status. This submission, in my view, has been made to be rejected.

12. It is clear from the criteria enumerated in II(C) quoted above that wealth test is to be applied in case of employees in public sector undertakings, pending evaluation of the posts on equivalent or comparative basis with the officers/ employees falling in II(A) and (B). Once the income and wealth test is applied, income from salary will certainly determine the creamy layer status of a person. The Explanation-I to the Income/Wealth test merely bars clubbing of income from salary or agriculture land. It does not say that income from salary will not be taken into account at all.

13. Learned counsel for the petitioner has submitted that even if the petitioner''s father is treated to be holding a post equivalent to Class-I Officers of Central or State service, he was promoted to scale-II at the age of 46 and he had joined service in Bank at the age of 23 years as clerk-cum-cashier which is class-III post. His claim is that petitioner''s father was neither working on Class-I post nor got into Class-I at the age of 40 years earlier and therefore the petitioner could not have been excluded from benefit of reservation.

14. Admittedly, equivalence of posts has so far not been decided over which there is no dispute. Therefore, this Court cannot evolve a method of deciding equivalence of posts'' as has been suggested by learned counsel for the petitioner.

I do not find any merit in this submission made by learned counsel for the petitioner in this regard, which is based on his individual understanding of equivalence of posts.

15. Learned counsel for the petitioner has also relied upon clarification issued by the Department of Personnel and Training vide its order dated 14.10.204 (sic--2004?) addressed to All Ministry/Departments etc. Paragraph No. 7 of which reads thus:--

"7. In regard to clause (v) of para. 4, it is clarified that the sons and daughters of parents of whom only the husband is a directly recruited Class-II/Group-B officer who gets into Class-I/Group-A at the age of 40 or earlier are treated to be in creamy layer. If the father is directly recruited Class-III/Group-C or Class-IV/

Group-D employee and he gets into Class-I/Group-A at the age of 40 or earlier, his sons and daughters shall not be treated to be falling in creamy layer."

16. However, in the absence of decision with regard to equivalence of posts such submission has no substance. In my opinion, in the facts and circumstance of the case, income/wealth tax was applied to determine the creamy layer status of the petitioner which will depend upon, inter alia, the income of the petitioner''s father from salary, being an employee in State Bank of India. This Court cannot presume equivalence of posts of employees of Bank vis-?-vis Central Government/State Government employees. I am of the opinion, if either the income of the parents from salary or income of the parents from other sources than the salary and agriculture land exceeds the limit of six lacs per annum for a period of three consecutive years, the sons, and daughters of such persons shall have to be treated to be falling in creamy layer. I am of the view that the Bank rightly refused to extend the benefit of reservation to the petitioner for the purpose of his appointment as a Probationary Officer in the Bank under OBC category and has been rightly treated to be falling under "creamy layer".

