
(2015) 04 AHC CK 0036
In the Allahabad High Court
Case No : Special Appeal No. 204 of 2015

Canara Bank and Others

APPELLANT

Vs

Gopal Tiwari and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Citation : (2015) 4 ADJ 623 : (2015) 110 ALR 827 : (2015) 3 AWC 2830

Hon'ble Judges : Arun Tandon, J; Satish Chandra, J

Bench : Division Bench

Advocate : P.N. Saxena and Siddharth, for the Appellant; Arvind Kumar Goswani and S.N. Tripathi, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. Heard Shri P.N. Saxena, Senior Advocate assisted by Shri Siddharth, Advocate on behalf of the appellant. This special appeal has been filed by the Canara Bank through its Chief Managing Director against the order of the Hon"ble Single Judge dated 26.2.2015 passed in Civil Misc. Writ Petition No. 11994 of 2015 (Gopal Tiwari v. Union of India and others).

2. Under the order impugned the Hon"ble Single Judge has found that non-consideration of the candidature of the petitioner on the ground that his name has not been sponsored by Employment Exchange was unjustified in view of the law laid down by the Apex Court in the case of Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, (1996) 8 AD 174 : (1997) 75 FLR 353 : (1996) 9 JT 638 : (1997) 1 LLJ 56 : (1996) 6 SCALE 676 : (1996) 6 SCC 216 : (1996) 5 SCR 73 Supp , wherein it has been held that while notifying the vacancy to the Employment Exchange, the instrumentalities of State must afford opportunity to all similarly situate candidates by inviting application through necessary advertisement. The writ Court has, therefore, proceeded to direct that the petitioner who is already working with the bank may also be considered in the process of selection.

3. Counsel for the petitioner-respondent, in light of the judgment of the Apex Court in the case of The Excise Superintendent Malkapatnam Krishna (Supra) submits that a circular has been issued by the Ministry of Personal, Public Grievance and Pensions, Department of Personnel and Training, Government of India on 18.5.1998 which permits calling of names of suitable candidates from Employment Exchange only and, therefore, no mistake has been committed by the Bank by but considering the petitioner whose name had not been forwarded by the Employment Exchange. It is also mentioned in the circular that those persons will be entertained whose names have been sponsored by the Employment Exchange. Since the petitioner has not been sponsored by the Employment Exchange, he has no right to be considered. He also points out that person having qualification of High School is ineligible for the post in question. Lastly it is submitted that the writ Court has been pleased to allow the writ petition without giving any time to the counsel for the bank to file the response.

4. Shri R.P. Dubey, counsel for the petitioner-respondent disputes the contention specifically with reference to the time having not been granted by the writ Court to file counter-affidavit. He stated that the counsel for the appellant bank Shri Siddharth was very much present in the Court, he did not pray for time, therefore, there was no obligation on the part of the writ Court to grant any time.

5. On merits it is submitted that there is complete misreading of the circular of the Government of India dated 18.5.1998, specifically paragraph 3 which mandates that not only names should be called for from the Employment Exchange, the vacancy should also be notified in the Employment News as also on the notice board of the office so that the selection may stand the test of fairness.

6. In reply to the plea that a candidate possessed of higher qualification being disqualified, he placed reliance upon the Division Bench judgment of this Court in the case of Firoj Alam Khan and others v. State of U.P. and others, 1986 UPLBEC 674 .

7. We have heard learned counsel for the parties and have examined the records of the present writ petition.

8. At the very outset we may record that it is not fair on the part of the counsel for the appellant to make statement of facts qua the Court proceedings without any pleading in that regard, supported by an affidavit, namely that the learned Single Judge proceeded to decide the writ petition without affording an opportunity to file counter-affidavit. Counsel for the appellant bank was very much present in the Court when the case was taken up. If the counsel had not asked for time to file counter-affidavit, where was the obligation of the Court to grant him time. We record that if the counsel for the appellant bank has any issue with regards to the time having not been granted by the Court, despite a request having been made, he should have first approach the same Court. There is no pleading supported by an affidavit in this appeal on the issue sought to be

raised orally before us. We, therefore, reject the first plea raised by the appellant.

9. So far as the calling of the names from the Employment Exchange alone is concerned we may record that the counsel for the petitioner-respondent is more than correct in submitting that the law has been well-settled in the case of Excise Superintendent (Supra) and that the circular issued by the Government of India enclosed at page 89 in paragraph 3 also mandates, the departments of the Government to not only call for the names from the Employment Exchange but also to advertise the vacancy in the Employment News. It is worthwhile to reproduce paragraph Nos. 3 and 4:

"Accordingly, it is clarified that in addition to notifying the vacancies for the relevant categories (excluding those filled through the Union Public Service Commission and the Staff Selection Commission) to the Employment Exchange, the requisitioning authority/establishment may keeping in mew administrative budgetary convenience arrange for the publication of the recruitment notice for such categories in the "Employment News" published by the publication division of the Ministry of Information and Broadcasting, Government of India and then consider the cases of all the candidates who have applied. In addition to the above such recruitment notices should be displayed on the office notice boards also for wider publicity.

These orders will take effect from the date of issue and will not apply to such cases where process of recruitment through employment exchanges/open advertisement has been initiated before the said date."

10. In view of the aforesaid, the second contention raised on behalf of the appellant also has no substance.

11. So far as the plea of higher qualification being a disqualification is concerned, the issue has been settled under the Division Bench judgment of this Court in the case of Firoj Alam Khan (Supra).

12. For the said reasons we see no good ground to interfere with the order of the Hon"ble Single Judge.

13. However, since there may be similarly situate large number of persons who may also be eligible to be considered for appointment on the posts in question, we permit the bank to re-advertise the vacancy and to proceed with the process of selection afresh in conformity with the law and observations made above. Liberty is granted to the petitioner to apply a fresh vacancy as and when the advertisement is published. Order of the Hon"ble Single Judge stands affirmed subject to the liberty granted above. With the aforesaid observations/direction the present special appeal is disposed of.