
(2013) 11 RAJ CK 0175
In the Rajasthan High Court
Case No : Civil Writ Petition No. 13298 of 2012

Dungar Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2014) 2 CDR 674

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Dr. Vineet Kothari, J.—The petitioner Dungar Singh S/o. Sh. Bhanwar Lal applied for the post of Banking Assistant notified by the Central Cooperative Bank of State of Rajasthan, for which the respondent No. 3 -- Rajasthan Institute of Cooperative Education and Management (RICEM for short) was authorized to hold the examinations and prepare the merit list. The petitioner was at wait list No. 1 for 12 vacancies for respondent No. 4 -- Nagaur Central Cooperative Bank Ltd. represented by Mr. Suresh Charan. When 3 of the persons appointed for such 12 posts did not join the service vide communication Annex 10 dt. 31.10.2012, one of the post in General Category became vacant on account of non-joining of offer of appointment given to one Mr. Manvendra Singh and the petitioner Dungar Singh belonging to the OBC category could be so appointed against the unreserved General category and under the said list supplied to the respondent No. 4 -- Bank by RICEM along with communication Annex. 5 dt. 06.01.2012, the merit list was not operated by the respondent -- Bank for no valid reason and hence the present writ petition was filed by the petitioner seeking a direction to the respondent-Bank for operating the merit list and offer appointment to the petitioner on the post of Banking Assistant as he was in the wait list.

2. After hearing both the learned counsels, a coordinate bench of this Court passed a detailed order on 18.09.2013. The same is quoted below for ready

reference:

Heard learned counsel for the parties.

In this writ petition, the petitioner has prayed for direction to the respondents to consider his candidature for providing appointment on the post of Banking Assistant in the office of the respondent No. 4 -- Nagaur Central Co-operative Bank Limited, Head Office Gandhi Chowk, Nagaur.

After hearing learned counsel for the parties, following order was passed by this Court on 27.08.2013:--

Heard Learned counsel for the parties.

An order was passed by this Court on 18.12.2012 whereby, it was expected from the respondents that if any vacancy is in existence and petitioner stood at serial No. 1 of waiting list then his case may be considered against the said vacancy.

Learned counsel for the petitioner submits that inspite of the fact that vacancy is there, respondents are not providing appointment to the petitioner. Learned counsel for the petitioner submits that appointment orders were issued but only eight candidates joined on the post of Banking Assistant, therefore, obviously petitioner's candidature was to be considered against the vacancy which remained unfilled due to non-joining of candidates from the main list but respondents are not taking any action and inspite of the fact that petitioners are at serial No. 1 in waiting list and order was passed on 18.12.2012 for considering his candidature, therefore, appropriate direction may be issued to the respondents to provide appointment to the petitioner.

In view of above, Mr. Rahul Bhati, Adv. is directed to seek explanation from the concerned officer of the respondent No. 4 as to why petitioner's candidature has not been considered for appointment to the post of Banking Assistant due to non-joining of persons in main list.

List the matter on 02.09.2013, as prayed.

Upon perusal of the above order, it is apparently clear that the counsel for the respondent was directed to set explanation from the concerned officer of the respondent No. 4 as to why petitioner's candidature has not been considered for appointment to post of Banking Assistant due to non-joining of persons in main list.

Today learned counsel for the respondent produced the letter dt. 30.01.2012, 28.12.2012, 28.09.2012, 14.12.2012 and 06.02.2012 and submits that some time may be granted to place on record those documents.

First of all, it is required to be observed that the notices were issued to the respondent No. 4 -- the Managing Director of the Nagaur Central Co-operative Bank Limited, Head Office Gandhi Chowk Nagaur but reply has been filed under the signature of one Rajiv Kumar Bhati, Banking Assistant and Officer-Incharge

while showing himself as Officer-Incharge of the case. In para No. 2 of the affidavit, it is averted that contents of reply to the writ petition are based on record and the legal averments are mentioned by the counsel. In para No. 3 of Factual Narrations, following averments are made:--

That because of arising of such a situation where the replying respondent No. 4 was declined the important information then led the respondent No. 4 to examine whole ply of recruitment processed and done by the respondent No. 3 then the respondent No. 4 came to know the respondent No. 2 and 3 has no authority and all the process so adopted and recruitment of the candidates for different cooperative bank in the State of Rajasthan processed by the respondent No. 3 by a authorization which was without jurisdiction and without authority of law under the provisions lay down under cooperatives societies act but the respondent No. 2 has acted arbitrarily is without jurisdiction of the act in the recruitment process.

Upon perusal of the entire reply filed by the respondent No. 4 under the signature of Banking Assistant, it is revealed that although out of the list of selected candidates sent by the Rajasthan Institute of Cooperative Education & Management (RICEM), the respondents have provided appointment to nine candidates and out of the main list, Manvendra Singh, Vikas Kumar Kuldeep and Smt. Meera Meena did not join the duties and the petitioner made a prayer of operating waiting list because as per the adjudication made by Hon"ble Supreme Court in the event of non-joining of persons from the main list, the reserve list may be operated. It appears from the reply filed by the respondents that only to deny the appointment to the petitioner against the available vacancy for one or another reason, the respondents are not taking decision to provide appointment to the petitioner and inspite of passing order on 27.08.2013, nothing has been done till today by the respondents, more so. The reply has been filed under the signature of Banking Assistant on behalf of the Managing Director in which it is specifically stated that the selections have not been made in accordance with the Rules.

In the opinion of this Court once an order was passed by this Court to explain why the respondents are not operating the reserve list in the event of non-joining of persons and it is the duty of the respondents to explain before this Court but on the contrary, in the reply, the respondent No. 4 is making certain allegations against the respondent No. 3 inspite of the fact that certain appointments have been made from the main list selected by the respondent No. 3, therefore, at this stage, apparently, it is a case in which intentionally the respondent No. 4 is not taking any action for providing appointment to the petitioner in spite of the fact that claim of the petitioner has been forwarded by the respondent No. 3 vide Annexure-5.

In view of above, the respondent No. 2 - Registrar, Cooperative Societies, Rajasthan, Jaipur is directed to issue specific direction after due enquiry from the respondent No. 4 and Officer-Incharge Rajiv Kumar Bhati is directed to produce

the record of the case before this Court upon which he has made allegations in para No. 3 of the reply with regard to selection. List on 03.10.2013.

Sd/-

(Gopal Krishan Vyas), J.

3. It appears that after the aforesaid detailed order of the coordinate bench, the respondent -- Bank immediately issued an appointment order in favour of the present petitioner on 04.10.2013 and the said order was noticed by the Court while passing the order on 04.10.2013 itself which is also quoted below:

It is stated by Shri Rahul Bhati, learned counsel for the respondent that an order of appointment dt. 04.10.2013 has already been passed giving appointment to the petitioner as Banking Assistant in pursuant to the interim directions given by this Court. A fax copy of the order aforesaid is placed on record. A copy of this order has also been supplied to the petitioner.

Learned counsel for the petitioner submits that the petitioner shall report to the Managing Director to join the duties on or before 11.10.2013.

Put up on 18.10.2013.

Sd/-

(Govind Mathur), J.

4. With the appointment now offered by the respondent-Bank to the petitioner and he joined the said post of Banking Assistant, the present writ petition could have been disposed of as having become infructuous, but the learned counsel for the petitioner, Mr. M.S. Panwar, submitted that the petitioner should be given the benefit of notional seniority atleast from the date of recommendation Annex. 5 dt. 06.01.2012 with the waiting list supplied to the respondent No. 4-Bank by the RICEM and had the respondent No. 4-Bank immediately given him the appointment operating the said waiting list, the petitioner could have joined the service as Banking Assistant at that point of time itself and this loss of period on account of reticent attitude by the respondent-Bank cannot deprive the petitioner of the benefit of notional seniority.

5. The learned counsel for the petitioner, Mr. M.S. Panwar, drew attention of the Court towards the communication Annex. 8 dt. 05.09.2012 written by the Chairman of the respondent No. 4, Mr. Jagannath Burdak asking the RICEM to supply the complete merit list for all the Central Cooperative Banks along with the wait list and even explain justification of making any waiting list for the said post of Banking Assistant. It appears that because of this letter, the waiting list was not operated by the respondent No. 4-Bank.

6. The learned counsel for the respondent-Bank Mr. Suresh Charan, however urged that there was no mala fide reason for the Chairman to have asked these details from the RICEM and therefore, the said communication Annex. 8 dt.

05.09.2012 Should be treated to have been written on behalf of the concerned Executive Committee of the respondent-Bank appointed for the purpose of said recruitment of the Banking Assistant. He however submitted that the delay in appointment given to the petitioner on 04.10.2012 was on account of pendency of this litigation and there was no mala fides on the part of the respondent-Bank and he, therefore, submitted that the petitioner is not entitled to the benefit of notional seniority as claimed by him.

7. Having heard the learned counsel for the parties, this Court is of the opinion that the writ petition deserves to be disposed of by directing the respondent-Bank to give benefit of notional seniority to the petitioner from the date of Annex. 5 dt. 06.01.2012 recommendation of the RICEM to the respondent-Bank to operate the wait list in which the petitioner was at serial No. 1. This Court does not see any valid reason behind the communication of the Chairman of the respondent No. 4-Bank Annex. 8 dt. 05.09.2012 asking the authorized body of the respondent No. 3-RICEM to supply the complete merit list for all Central Cooperative Banks all over the State and also the justification of preparing the wait list at all. Such a communication unnecessarily delayed the operating of the waiting list and consequentially depriving the petitioner of his due appointment which could have been given to him soon upon the recommendations given by the RICEM vide Annex. 5 dt. 06.01.2012 and the petitioner was compelled to approach this Court by filing present writ petition on 15.12.2012, seeking a direction, against the respondent No. 4-Bank to operate the wait list and offer appointment to the petitioner for which clear vacancies existed with them and the aforesaid communication of the Chairman unnecessarily delayed the appointment of the petitioner. Therefore, this Court finds no justification in denying the benefit of the notional seniority, if not financial benefits, which the learned counsel for the petitioner did not press and rightly so, to the petitioner since he has actually joined only in pursuance of appointment order dt. 04.10.2013. Therefore, benefit of approximately 10 months of notional seniority deserves to be given to the petitioner with effect of the date when other eight persons of the select list were given the appointment as Banking Assistant by the respondent No. 4-Bank. Accordingly, the present writ petition is disposed of and the respondent No. 4-Nagaur Central Cooperative Bank Ltd. is directed to give the notional seniority to the petitioner with effect from the date of communication Annex. 5 dt. 06.01.2012, by which the Director of RICEM recommended the name of the petitioner in the wait list to be operated by the respondent No. 4 and offer appointment to the petitioner as Banking Assistant or from the date when other 8 persons were given appointment, whichever is later. The petitioner will however be not entitled to any financial consequential benefits in pursuance of the same as no such retrospective financial benefits can be given to the petitioner. No order as to costs. A copy of this order be sent to the parties concerned forthwith.