

(2016) 09 P&H CK 0256
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 9646 of 2014 (O&M)

Indresh Pratap Singh

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 06-09-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2016) 4 SCT 452

Hon'ble Judges : P.B. Bajanthri, J.

Bench : Single Bench

Advocate : Raman Mohinder, Advocate, for the Petitioners (In CWP Nos. 9648 of 2014 & 13409 of 2014); R.S. Tacoria, Advocate with Sumeet Sheokand, Advocates, for the Petitioner (in CWP No. 14206 of 2013); K.K. Tiwari, Advocate, for the Petitioners (in CWP No. 16429 o

Final Decision : Dismissed

Judgement

P.B. Bajanthri, J.—These bunch of petitions are being disposed of by common order since issue relating to absorption of the petitioners is involved. For the sake of convenience, facts are being taken from CWP No.9646 of 2014. The petitioners have questioned the order dated 1.1.2013 passed by the State Bank of Patiala (for short hereinafter to be referred as "SBOP") by which SBOP has taken a policy decision not to absorb services of contract appointees to the post of Officers Marketing & Recovery (Rural) like petitioners in the present case. Further they are seeking regularisation of their service with reference to the policy decision of the State Bank of India (for short hereinafter to be referred as "SBI") dated 20.7.2010 and to absorb/regularize services of the petitioners in the cadre of JMGS-1 on the post of Rural Marketing and Recovery Officers from 2.8.2010 on par with the similarly situated persons whose services were absorbed in SBI.

2. SBI formulated a policy for creation of a separate agribusiness unit to drive agri-business across the bank on 27.7.2004. In this regard Rules were framed

exercising powers under Rule 5.1, 2 (2) of the Management Trainees/Executives Service and Conduct Rules of SBI on 9.6.2004.

3. Amongst others, petitioners were selected by the SBI on contract basis for the post of OMRs (Rural) on 19.7.2005 for a period of two years and petitioners name was forwarded to work in SBOP. Selection and appointment on contract basis was after due advertisement in the year 2006 and it was extended from time to time, viz., on 18.12.2007 and 11.8.2010.

4. SBI framed a policy on 20.7.2010 vide Annexure P-20, for the purpose of absorption of Officers - Marketing and Recovery (Rural), Technical Officers (Farm Sector), Micro Finance Marketing Officers, Customer Relationship Executives (PB) and Customer Relationship Executives (ME) in JMGS-1 as Specialist Officers. For the purpose of absorption, certain conditions were imposed. It is learnt that the State Bank of Indore adopted policy of absorption issued by SBI. Thus some of the contract appointees in the both SBI and State Bank of Indore, persons who were appointed on contract basis and who fulfils the conditions stipulated in the absorption policy dated 20.7.2010, their services have been regularized/absorbed. Similarly, the petitioners who were working in SBOP approached SBOP and SBI, to consider their names for absorption on par with the contract appointees who were working in SBI and State Bank of Indore, and whose services were absorbed in respective Banks. Since the initial recruitment on contract basis to the post of OMRs was by the SBI. The grievance of the petitioners was turned down by the SBI and SBOP on the score that it is a policy decision of the SBI. It is left to the SBOP. Whereas the SBOP took the policy decision not to absorb the contract appointees stating that if the absorption of contract appointees is done, it would affect administration of the SBOP. Thus, the petitioners are aggrieved by the decision of the SBI and SBOP, in not considering their grievance relating to absorption of the contract appointees against the post of JMGS-I

5. Learned counsel for the petitioners submitted that they were initially appointed through the SBI by a common process in Associate banks of SBI and SBI has framed policy relating to absorption of contract appointees. Same has not been implemented, in so far as such officers who were appointed in SBOP have been discriminated. The SBI is not directing the SBOP to implement the policy of SBI dated 20.7.2010 (Annexure P-20), for the purpose of absorption of the petitioners' services. At the same time SBOP has taken a decision not to absorb the services of the contract appointees who were working in SBOP. Since SBOP is one of the associate banks of SBI, policy of the SBI is binding on the SBOP. Therefore, refusal to absorb the contract appointees like petitioners, is highly arbitrary, discriminatory and illegal.

6. Learned counsel for the petitioners further submitted that initially contract appointment is common for the associate banks of SBI, whereas for the purpose of absorption of contract appointees, the SBI cannot leave it to the associate banks. Therefore, SBI is not exercising the powers to its associate banks like

SBOP to absorb services of the contract appointees like petitioners in SBOP.

7. Per contra, learned counsel for the respondent No.1 argued that the initial appointment of the petitioners was on contract basis. They have no right to seek for writ of mandamus in the absence of policy of absorption in respect of contract appointees who are working in the SBOP.

8. Ranbir Singh and others approached this Court for the purpose of absorption of contract appointees. This Court while disposing of CWP No. 9335 of 2011 on 12.10.2012 vide Annexure P-43, observed as under :-

"In the meantime, the Bank, if so advised, may take conscious decision regarding absorption of services of the petitioners or similarly situated employees and about extension of the contract"

Pursuant to the disposal of CWP No. 9335 of 2011, SBOP has taken a conscious decision after examining the administrative difficulties not to absorb services of the contract appointees in the SBOP. An extract of the decision reads as under :-

"As at present there is sufficient staff strength at the operational level to main the responsibilities entrusted to the OMRs (Rural) employed on contract basis, thus there is no administrative exigencies to continue the services of OMRs (Rural) and the contract need not be renewed, nor the non renewal of contract period of the contractual appointees would adversely effect the working of the agriculture branches of the Bank in any manner."

9. Learned counsel for the respondent No.1 further submitted that if the services of the petitioners are absorbed for the Post of JMGS-1, it would be contrary to the regulations governing the post of JMGS-1. Therefore, the petitioners are not entitled for the relief sought in the present petition.

10. Learned counsel for respondent No.1 relied on some of the provisions of State Bank of India (Subsidiary Banks) Act, 1959 to point out that operation of the State Bank of India so also subsidiary banks vide Section 2 (j) and (k). He also relied on Section 50 of the Act, 1959, which reads as under :-

"Section 50 - Staff of a Subsidiary Bank

(1) A subsidiary bank may, subject to such limitations and conditions as may be prescribed, appoint such number of officers, advisers and employees as it considers necessary or desirable, for the efficient performance of its functions and on such terms and conditions as it may deem fit."

11. In view of above provisions, the associate bank like SBOP is an independent entity. Therefore, petitioners cannot have any grievance against SBI. The learned counsel for respondent No.1 relied on decision of the Apex Court reported in Associate Banks Officers' Association v. State Bank of India and others (1998) 1 SCC 428. Para 19 and 20 reads as under, which distinguishes the grievance of the employees of the associate bank and employees of SBI:-

"19. With regard to pay-scales, the grievance which has been made before us as of now, is only with regard to four increments which are given to the officers of the State Bank of India at the time of joining though the pay-scales are the same. This is not done in the subsidiary banks. The State Bank of India has submitted that in order to attract suitable persons, looking to the scale of their operations and responsibilities involved, this has been done. The subsidiary banks are not in a comparable position. Nor are their scales of operation comparable to the State Bank of India. The responsibilities of their officers are not comparable in view of the extent of operations of the subsidiary banks. In these circumstances, if the State Bank of India has offered increments to persons joining the State Bank of India, the same cannot be given to the officers joining the subsidiary banks.

20. All the grievances centre around these benefits. We do not think that the State Bank of India and the subsidiary banks are in a comparable position in this regard. It is also submitted by learned counsel for the State Bank of India that the benefits which are extended to the employees of the subsidiary banks are negotiated settlements with the unions of their employees. The benefits which are conferred are in accordance with the agreements which have been reached between the unions of the employees and the management of each bank. In these circumstances, we fail to see how the principle of "equal pay for equal work" can be applied in the present set of facts."

In view of above decision of the Supreme Court, the petitioners have not made out a case so as to seek any relief against the SBI.

12. It was further pointed out from one of the appointment order - subject to fulfilment of certain formalities. Extract of formalities reads as under :-

"2. Your appointment in the Bank would be purely of contractual nature, terminable on one month's notice or one month's proportionate amount of compensation in lieu of notice during first year of contract and three months' notice or three months' proportionate compensation in lieu of notice after one year by either side i.e. Bank or from your side. The contract would be initially for a period of 2 years from the date of joining and the contract of appointment will be renewable, at the sole discretion of the Bank, on completion of contractual period and depending upon your performance, suitability and need of the Bank. Please note that you would have no right to get permanently absorbed in the Bank, this being one of the essential conditions of your appointment. Please also note that you will be posted at rural branch(es) of the Bank and request for posting at any particular centre will not be entertained. However, your services are liable to be transferred to any branch/office of the Bank depending upon the needs and exigencies of service and may not be restricted to any Zone/State."

13. Reading of the above, it is crystal clear that appointment of the petitioners was on contract for a period of two years. It was also made clear to the petitioners that petitioners have no right to get permanently absorbed in the

bank, which is one of the essential conditions imposed in the order of appointment. He also relied on communication relating to absorption of officers appointed on contract basis vide Annexure R-4 dated 6.8.2011. Extract of the communication reads as under:-

"ABSORPTION OF OFFICERS

APPOINTED ON CONTRACT BASIS

We refer to your letter No. Per/VKG/225 dated 18.8.2010 on the above subject.

2. SBI had, as a one time measure and as a very special case, absorbed the Officers taken on contract basis as permanent officers in the Bank. Government of India has raised certain issues in this matter. Considering all aspects we are not in favour of you absorbing the officers taken on contract basis, as permanent officers."

Wherein decision has been taken not to favour absorbing the officers taken on contract basis as a permanent officers, since the Government of India raised certain issues relating to absorbing on permanent basis those who are on contract appointment. He relied on decision of this Court Karam Chand v. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh and another 2015 (4) SCT 763, wherein Division Bench of this Court held as under:-

"10. One of the major grouse of the appellant is that he was discriminated by not giving permanent employment and regularisation in service at par with the other similarly situated persons who were absorbed permanently by the respondent Bank. However, generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it cannot be made a basis for its repetition. Reference can be had to Chandigarh Administration and another v. Jagit Singh and another AIR 1995 Supreme Court 705."

In so far discrimination contention raised by the petitioners is concerned, the

same is not tenable in view of the above decision of this Court.

14. Learned counsel for SBI - 1st respondent relied on decision of the Bombay High Court, Bench at Aurangabad, in Writ Petition no. 5839 of 2011 titled as Deshmukh Deepali Shamsunder & five others v. The State of Maharashtra and two others, decided on 11.8.2011, vide Annexure R-1. The Division Bench of the said Court dismissed the petition filed by the petitioners therein who have sought for a direction to respondent No. 3 therein to permanently absorb them in the Junior Management Grade Scale-I as per the policy of the parent bank (respondent No. 2 therein), wherein the petitioners were also appointed as OMR(R) on contract basis.

15. Learned counsel for the 4th respondent - SBOP vehemently contended that para 15 of the decision of the Apex Court in the case of Associate Banks Officer's Association's case (Supra), which reads as under:-

"15. The narrow question which we have to consider is whether looking to the nature of the relationship between the State Bank of India and each of the subsidiary banks, can the employees of the subsidiary banks be considered as employees of the State Bank of India? In view of the clear provisions of Section 50, it is not possible to come to a conclusion that the employees of the subsidiary banks are, for all practical purposes, employees of the State Bank of India. Even dehors Section 50, looking to the scheme of the State Bank of India (Subsidiary Banks) Act, 1959, it is quite clear that each of the subsidiary banks is set up as a separate bank. Each subsidiary bank has its own capital structure, its own operations. Each of the banks has its own staff with its own terms and conditions of service. Therefore, the employees of the subsidiary bank cannot be treated as the employees of the State Bank of India. The employees of the subsidiary banks are not entitled to claim the same benefits as the employees of the State Bank on the ground that they are, in effect, the employees of the State bank of India."

The Supreme Court has taken note of that SBI and SBOP are separate entity.

16. Therefore, grievance of the petitioners that there is a discrimination among the contract appointees who were appointed in the SBI and State Bank of Indore and SBOP. Benefit of absorption of contract appointee in SBI and State Bank of Indore cannot benefit to the contract appointees in the SBOP. Further, he relied on decision in the case of Dharmendra Prasad Singh and others v. The Chairman, State Bank of India and others. Para 12 of the decision of the Division Bench of Delhi High Court passed in LPA 260 of 2015 titled as State Bank of India and another v. Dharmendra Prasad Singh and others, reads as under :-

"12. The said decision holds that the right to public employment when viewed through the eyes of Article 14 and Article 16 of the Constitution of India requires the recruitment and conditions of service of persons appointed to public services to be as per Rules framed in exercise of the constitutional power under Article 309 of the Constitution of India and appointments made strictly as per the Rules.

Having made the Rules for appointment, the State cannot flout its Rules and confer undue benefits on a select few. In other words there cannot be backdoor entry. The decision guides that sympathy for those who had worked for years after entering the service through a backdoor cannot defeat the right of the citizens of this country to be offered equal opportunity in matters of public employment. The Court held that these backdoor entry employees would have no legitimate expectation of being confirmed. The Constitution Bench nullified all schemes of regularisation and prohibited any to be made in future where backdoor entries were regularized."

17. It was further submitted that SBI policy has not been adopted by SBOP and whatever decision taken by the SBI is not binding and SBOP is an independent entity. Since status of SBOP is independent than the SBI, SBOP should have their own decision. In this regard, SBOP has already taken a decision not to absorb contract appointees on permanent basis. Thus, the petitioners have not made out a case so as to seek permanent absorption on par with the contract appointees in SBI, whose services have been made permanent vide policy dated 20.7.2010.

18. Heard learned counsel for the parties.

19. The petitioners were appointed to the post of OMRs (Rural) on contract basis and their appointment is for a limited period, which is extendable only on contract basis and in their appointment it was specifically made clear that no right to get permanently absorbed in the bank, which is one of the essential condition imposed in the offer of appointment of the petitioners, who were appointed on contract basis. The main grouse of the petitioners is that initially process of recruitment on contract basis on the post of OMRs was processed by the SBI. Thereafter, selected persons to the post of OMRs were distributed to associate banks like State Bank of Indore, SBOP and other associate banks of SBI. Petitioners were allotted to SBOP. Persons who were allotted to SBI and State Bank of Indore, their services have been made permanent by absorbing them under the policy dated 20.7.2010. Thus policy of the SBI would be binding on the SBOP. In the initial recruitment on contract basis has been processed through SBI. Therefore, denial or decline to absorb the petitioners who were working in SBOP on contract basis or similarly situated persons like who were appointed in SBI or State Bank of Indore, therefore, the petitioners' contention is that respondents SBI and SBOP have discriminated while declining benefit of absorption. Learned counsel for the petitioners submitted that contract appointees through the SBI for a class of persons therefore, denial of permanent absorption to some of the persons in a class of persons amounts to discrimination. In other words the petitioners have been facing step motherly treatment. SBI Subsidiary Act, 1959, which also binds the subsidiary banks, consequently, policy decisions of SBI are required to be followed or adopted by the subsidiary banks like SBOP.

20. Before adverting to the petitioners grievance, it is necessary to peruse policy

of the SBI relating to absorption of contract appointees, whether it meets Constitutional provision like Article 14 and 16 or not, so as to examine petitioners grievance relating to seeking writ of mandamus to absorb them on permanent basis with reference to policy decision. SBI policy relating to absorption of contract appointees on permanent basis do not meet the Constitutional provision like Article 14 and 16 of the Constitution for the reasons that at the time of initial appointment of the contract appointees, while advertising or in the order of appointment, it was not made known to the petitioners or to the General Public, so as to indicate that contract appointment would be followed by permanency. Thus the petitioners have no right to seek mandamus. At this juncture, it is relevant to extract decision of this Court passed in CWP No. 16157 of 2015 titled as Shilpa Jindal v. Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others, dated 29.4.2016, para 15 and 33 of which reads as under:-

"(15) The Supreme Court has authoritatively ruled that the Tribunal and Courts cannot give directions to the department/Government Institution or Organisations to regularise services of an employee. Such a direction and implementation of the same would be violative of Articles 14 and 16 of the Constitution. When the petitioner was appointed on contract basis to the post of a Lecturer in the year 2003, the advertisement, as well as, appointment order made clear that selection and appointment was on contract basis. The contract appointment cannot be converted into regular appointment on the sole ground that the petitioner has continued for more than a decade. Had the respondents notified the selection and appointment to the post of Lecturer for "regular recruitment", large scale candidates who were eligible and/or already working elsewhere on contract basis would be denied to compete for selection and appointment to the post of Lecturer/Assistant Professor. In other words, each and every eligible candidate must know the nature of public appointment. This Court cannot give direction to regularise petitioner's services by way of writ of mandamus, since the petitioner has not pointed out under which statutory rules she has got right to seek regularisation. Unless right is vested in a person, Court cannot issue writ of mandamus to the respondents. Mandamus can be issued against a public authority only on its failure to perform mandatory legal duty. If there is no such failure, mandamus would not be issued. The Supreme Court in the case of Mani Subrat Jain v. State of Haryana (1977) 1 SCC 486 held as follows :-

"9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something (See Halsbury's Laws of England 4th Ed. Vol. I, paragraph 122; State of Haryana v. Subash Chander Marwaha & Ors. (1) Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir

Ahmed & Ors. (2) and Ferris Extraordinary Legal Remedies paragraph 198."

In the case of Tirumala Tirupathi Devasthanams v. K. Jotheeswara Pillai (dead) by LRs and others (2007) 9 Supreme Court Cases 461, it has been held that:-

"9. The principles, on which a writ of mandamus can be issued, are well settled and we will refer to only one decision rendered in The Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh AIR 1977 SC 2149, where this Court observed as under: -

"A writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limits of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance."

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(33) The equality clause enshrined in Article 16 requires that every appointment be made by an open advertisement as to enable all eligible persons to compete on merit. However, appointment of the petitioner on contract basis, it is crystal clear, was only for a limited period for 6 months, even though it was extended from time to time, one of the condition is that appointment is till the regular recruitment is made through UPSC. It is to be understood that a contractual appointment comes to an end at the end of the contract. It is also a term of the contract as well as the law regulating recruitment of persons on contract basis. Therefore, when such persons are to be recruited into service on permanent basis the law must again be followed i.e. all persons who are eligible be considered for appointment on permanent posts in accordance with the rules of recruitment and all of them should be given an opportunity by inviting applications indicating that selection and appointment to permanent/regular post/ vacancy. That is the mandatory Policy of Articles 14 and 16 of the Constitution. If the regularisation of the petitioner is made, it is per se illegal and discriminatory as those eligible candidates, who had the requisite merit are denied the right to compete for the subject post. There is no intelligible differentia to treat the petitioner as a class by itself, so as to exclude other eligible candidates who possess requisite qualification and other eligibility criteria from being considered as Lecturer/Assistant Professor."

21. In view of the above decision, the petitioners have no right to seek absorption in a particular post without the post being advertised on permanent basis. In other words, without giving an opportunity to those eligible candidates to participate in the process of regular recruitment to the post of JMSG-1 or equivalent post.

22. The petitioners' prayer is to absorb them on permanent basis on the post of JMSG-I. The post is governed by rules of recruitment in the SBOP. One cannot ignore the rules of recruitment and directly absorbing a set of persons, merely on the footing that they were initially appointed on contract basis. If such permanent absorption to JMGS-1 is permitted, it would violate rules of recruitment, as well as, Constitution provisions like Article 14 and 16 of the Constitution.

23. In this backdrop, so also read with decisions in Associate Banks Officer's Association's case (Supra), Karam Chand's case (Supra), Deshmukh Deepali Shamsunder's case (Supra) and Dharmendra Prasad Singh's case (Supra), the petitioners have not made out a case so as to interfere with the orders dated 1.1.2013 and 27.7.2010 and seeking a direction to implement the policy for the purpose of permanent absorption is hereby rejected.

24. The Civil Writ Petitions stands dismissed.