

(2016) 05 RAJ CK 0060

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 1931 of 2014

Institute of Banking Personnel Selection

APPELLANT

Vs

Aman Nagar

RESPONDENT

Date of Decision : 24-05-2016

Acts Referred:

Citation : (2016) 2 WLCRajUC 170

Hon'ble Judges : Mr. M.N. Bhandari and Mr. J.K. Ranka, JJ.

Bench : Division Bench

Advocate : Mr. Rajendra Salecha, Advocate, for the Appellant; Mr. M.F. Baig, Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. Result of the non-appellant has been brought in sealed cover and opened in the Court. The non appellant has scored more marks than the cut-off for unreserved categories.

2. The appeal was heard on merits.

3. Learned counsel for the appellant submits that so far as Institute For Banking Personnel Selection (IBPS) is concerned, it conducts selection for different Banks, but has no authority to make appointments. The learned Single Judge has given direction for appointment of the non-appellant by treating him to be OBC candidate. The post of Agriculture Field Officer (Scale-1) is to be filled by the respective Banks and not by the appellant herein. The direction given by the learned Single Judge is thus not maintainable, qua the appellant.

4. It is further submitted that the appellant herein does not fall in the definition of State, agency or other authorities, as given under Article 12 of the Constitution of India. In view of the above, the writ was not even maintainable. The reference of a judgment of Bombay High Court is given which was upheld by the Apex Court.

5. Learned counsel for the non-appellant has contested the case. He submits that now after opening of the result, even the non-appellant does not require support of OBC certificate, because he has scored more marks than the cut-off for unreserved categories. He should have been offered appointment even without going into the controversy of caste certificate. A direction for appointment given by the learned Single Judge, is to be complied by the respective Bank and not by the appellant, in view of the above, appropriate modification can be made in the order passed by the learned Single Judge.

6. Coming to the issue about maintainability of the writ petition, it is submitted that now after seeing the result, the issue aforesaid should not have been taken by the appellant. It is more so when it was not raised before the learned Single Judge, rather, none appeared on behalf of the appellant despite service. It is further submitted that Bombay High Court has decided the issue about maintainability of writ petition without referring to the aims and objects of IBPS and other related issues. It is not necessary that to fall under Article 12 of the Constitution, the only issue required to be considered is about the persuasive control of the State. The issue aforesaid could have been considered by this Court if would have been raised before the learned Single Judge, because dismissal of SLP in limine does not become a precedence. It is, however, a fact that no such objection was taken before the learned Single Judge.

We have considered the rival submissions and perused the record.

7. On a writ petition preferred by the non-appellant, notice was issued and after service of notice, when none appeared on behalf of IBPS, the writ petition was decided vide order dated 15.7.2014. The appellant preferred a miscellaneous application to contest the issue as to whether the non appellant would fall in the category of OBC or not ? The issue of maintainability was not raised or argued before the learned Single Judge while arguing the miscellaneous application. The issue aforesaid has been taken for the first time in the appeal. We would have given due cognizance of the issue, but find that after opening of the result, even the controversy taken up before the learned Single Judge and decided therein is not material. It is for the reason that petitioner has scored more marks than the cut-off for unreserved categories. If at all he failed to submit the caste certificate or his caste is not falling in the OBC category, he should have been considered along with the open category candidates. Taking into consideration the result, we find the controversy raised before the learned Single Judge is now irrelevant as the caste certificate has lost its significance in view of the marks obtained by the non-appellant. It is, however, a fact that a direction for appointment should not have been given on IBPS as it is only a selection agency. If at all the learned Single Judge was convinced by the issue raised by the non-appellant-petitioner, an appropriate direction could have been to recommend the name of the non-appellant for his appointment on the post of Agriculture Field Officer (Scale-1) in order of merit to a Bank where vacancy exists.

8. In the background aforesaid, we find substance in the appeal preferred by the

appellant on the aforesaid issue and set aside the order of the learned Single Judge for a direction for appointment of the non appellant and that too, by the IBPS. The appeal is, however, disposed of with the direction to IBPS to recommend the name of the non-appellant-petitioner as per the merit and by the procedure adopted for it. After adopting the procedure for allocation, the name of the non-appellant would be recommended to the appropriate Bank/Institution, if he is otherwise eligible.

9. The issue of maintainability of the writ petition is kept open. It is looking to the fact that the said issue was not taken before the learned Single Judge even after service of the notice and even while maintaining the miscellaneous application for recall of the order. In any case, the issue of maintainability of the writ petition is relevant, but looking to the result, and to do the justice, modification in the order has been made as per the prayer of the appellant herein. Thus, after keeping the issue open but maintainability of writ after considering the aims and objects of IBPS and other related issues, which may not have been brought before the Bombay High Court, the appeal is allowed in part with the aforesaid.

10. The appellant would not be precluded to raise objection about maintainability of the writ petition in future litigation, but should be taken at the first instance so that it can be considered and decided appropriately by the Court.