

(2023) 09 GAU CK 0005

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5929 Of 2022

Kakumoni Barman

APPELLANT

Vs

Punjab National Bank And 3 Ors

RESPONDENT

Date of Decision : 07-09-2023

Acts Referred:

Citation : (2023) 09 GAU CK 0005

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : A. R. Tahbildar, A. Ganguly, P. J. Phukan

Final Decision : Allowed

Judgement

1. Heard Shri A. R. Tahbildar, learned counsel for the petitioner. Also heard Shri A. Ganguly, learned Standing Counsel, Punjab National Bank, who submits that affidavit-in-opposition as well as an additional affidavit have been filed by the said respondents. Shri P. J. Phukan, learned counsel is present for the Gauhati University.

2. The grievance of the petitioner pertains to a communication dated 30.06.2022 whereby her appointment as Peon in the Punjab National Bank (hereinafter PNB) has been cancelled.

3. The facts projected in the writ petition is that an advertisement was issued by the PNB for filling up certain posts including 5 (five) posts of Peon in the unreserved category. Under Clause-5, the eligibility criteria have been stated regarding the age as well as the qualification. Since the issue hinges around qualification, it would be necessary to mention that the prescribed qualification was "minimum and maximum pass in XIIth standard or its equivalent with basic reading/writing knowledge of English". The advertisement also stipulated that candidates having completed higher qualification i.e. Graduation and above are not eligible. It is the case of the petitioner that she had applied for the said post on 12.02.2022 and has claimed to have met the eligibility criteria, both in terms

of the age and qualification. It is the categorical case of the petitioner that on the date of submission of such application, the petitioner was a Higher Secondary pass candidate. In the said recruitment process, the petitioner had come out successfully and was offered the appointment vide order dated 25.03.2022. However, it appears that some verification process was undertaken by the Bank after which, the impugned letter dated 30.06.2022 was issued by which the appointment of the petitioner was cancelled. The said impugned letter has stated that the petitioner was a Graduate which she had obtained in the year 2021 and her Grade Sheet was issued on 23.12.2021.

4. Shri Tahbildar, the learned counsel for the petitioner has submitted that apparently the impugned order is erroneous as the petitioner was not a Graduate as on 23.12.2021. He submits that the Bank itself has clarified the issue in the affidavit-in-opposition dated 22.09.2022 whereby the matter has been clarified to the extent that the date stated in the impugned letter was mistakenly done and the petitioner had actually become a Graduate on 15.02.2022. However, the Bank has justified its action by stating that since 15.02.2022 was the last date for submission of application on which date, the petitioner had obtained the Graduation and accordingly, she was disqualified and therefore the impugned order is still sustainable.

5. Shri Tahbildar, the learned counsel for the petitioner by referring to the advertisement has submitted that the age as well as qualification are to be reckoned as on 01.01.2022 on which date, the petitioner was not a Graduate. Alternatively he submits that if 01.01.2022 was the date only for reckoning the age, admittedly the application was submitted by the petitioner pursuant to the advertisement only on 12.02.2022 on which date, she was not a Graduate. It is submitted that the impugned order is unreasonable and unduly harsh as a hyper-technical approach has been taken by the Bank by disqualifying the petitioner in spite of her eligibility and selection in the recruitment process. The learned counsel accordingly submits that the impugned order is liable to be interfered with and the petitioner be directed to be allowed to join her post. The learned counsel further apprises this Court that there is an interim order to keep one post vacant.

6. Shri A. Ganguly, learned Standing Counsel, PNB has submitted that the impugned order dated 30.06.2022 has been passed after a proper verification. He however admits that there was an error in the impugned order in considering the petitioner to be a Graduate of the year 2021. At the same time, he also submits that the position would not change as the petitioner had become a Graduate on 15.02.2022 which was the last date of submission of application. The learned Standing Counsel however fairly submits that the impugned order has been passed not out of any mala fide but by following the mandate of law.

7. Shri Phukan, the learned Standing Counsel, Gauhati University has submitted that under the facts and circumstances, two interpretations would be available. While the narrow interpretation would be to term the petitioner to be a Graduate

at the time of submission of the application, a broad interpretation may be in favour of the petitioner. Shri Phukan, learned Standing Counsel has however placed reliance upon a case in Chief Manager, Punjab National Bank & Anr. Vs Anit Kumar Das reported in (2021) 12 SCC 80.

8. Shri Tahbildar, the learned counsel for the petitioner in his rejoinder has submitted that the case law cited will have no application as it relates to suppression of material facts and in the instant case, there is not even any allegation of any suppression as admittedly, the application of the petitioner was submitted on 12.02.2022 whereas the results were declared on 15.02.2022.

9. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

10. With regard to the last date of having the qualification, there are a catena of decisions which have laid down that qualification/eligibility acquired after the last date would not be taken into consideration. However, in the instant case, there is a distinction of facts as the matter is not regarding acquiring of qualification but being ineligible because of over qualification.

11. From the materials on record and after hearing the parties it is not being disputed that with regard to qualification, a candidate should have the minimum and maximum qualification as XIIth standard and there was a specific stipulation that Graduation and above qualification are not eligible. It is also not in dispute that on 12.02.2022 when the petitioner had applied for the post, she was not a Graduate as the results were yet to be declared. There was no stipulation in the advertisement that persons who were pursuing any higher post above Higher Secondary would not be eligible to participate in the recruitment process provided that such qualification was not possessed in the meantime.

12. There is another aspect in the matter which would be revealed by a careful reading of the impugned order dated 30.06.2022. The letter proceeded with the presumption that as on the date of the application i.e. 12.02.2022, the petitioner was a Graduate and the said conclusion was based on a Grade Sheet issued on 23.12.2021. It appears that the only consideration for cancelling the appointment of the petitioner was on the presumption that she was a Graduate of the year 2021 and therefore she was not qualified to submit the application which was done on 12.02.2022. The affidavit of the Bank has however clarified the issue that the cancellation was on an erroneous presumption that the petitioner was a Graduate of the year 2021 however with a rider that the results of Graduation were declared on 15.02.2022 which was the last date of filing of the application.

13. In the instant case, as has been mentioned above, it is no dispute that on the date of submission of the application i.e. 12.02.2022, the petitioner was not a Graduate. Therefore, the question of suppression of any material facts would not be applicable in the instant case. This Court is also of the opinion that the

order dated 30.06.2022 which is impugned in this writ petition apparently has proceeded under the assumption that as on the date of filing of the application on 12.02.2022, the petitioner was disqualified as she was a Graduate and this finding of fact is an erroneous one which is also admitted by the Bank in its affidavit-in-opposition dated 22.09.2022. For ready reference, the relevant pleadings of the said affidavit-in-opposition is extracted herein below:-

" 8. That in reply to paragraph no. 6 of the petition, the answering respondents do not deny the same as the respondent no. 4 University had informed the bank that the petitioner had graduated in the BA final examination as on 23.12.2021 as per their record. However, subsequently it was informed by the respondent no. 4 that the petitioner had cleared her back paper on 15.02.2022 and thus it was on 15.02.2022 that she had acquired the higher qualification of graduate and thus she is no more eligible to be considered for the post of peon."

14. That being the position, this Court is not required to go to any other aspect of the matter as the impugned communication dated 30.06.2022 is not followed by any corrigendum which is required to be adjudicated. Even otherwise, this Court is of the view that since on the date of submission of application by the petitioner which was 12.02.2022 the petitioner was admittedly not disqualified, her candidature could not have been cancelled on the ground of over qualification. This Court is also of the view that the law laid down on the cut-off marks are only with regard to acquiring of qualification subsequently and may not be applicable in the instant case. Further, this Court has noticed that the selection was based on merit in which the petitioner was found to be most meritorious which was followed by an appointment letter and therefore this Court is of the view that the cancellation order is unduly harsh and unreasonable.

15. Accordingly, this Court is of the opinion that the impugned order dated 30.06.2022 is unsustainable in law and accordingly the same is set aside.

16. Consequently, it is directed that the petitioner be allowed to join and discharge her duties as a Peon on the strength of the appointment order dated 25.03.2022. It is however made clear that the petitioner would not be entitled to any back wages.

17. Writ petition stands allowed. No order as to cost.