(2012) 08 GAU CK 0104

In the Gauhati High Court

Case No : Writ Petition (C) No. 139 of 2010

Kalpana Das APPELLANT

Vs

Assam Co-operative Apex Bank Ltd. and Others RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:

Citation : (2013) 1 GLD 572 : (2012) 5 GLT 824

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : S. Katakey, for the Appellant; D. Saikia and Mr. I. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—Heard Mr. S. Katakey, learned counsel for the petitioner as well as Mr. D. Saikia, learned counsel appearing for the Apex Bank. I have also heard Mr. I. Choudhury, learned counsel for the respondent Nos. 3 to 17. The challenge made in this writ petition is the result for selection for the post of Officer Grade in the respondent Bank. Referring to Rule 25 (a) of the Assam Co-Operative Apex Bank Ltd. (Staff) Rules, 1980 which is quoted below, it is the case of the petitioner that the Bank could not have relaxed the said qualifying marks, firstly to 40% and then to 30% so as to give promotion to the private respondent.

25. (a) The Department Examination will be held once in a year in the month of April regularly. The qualifying marks for passing the examination will be 50% of the total marks. An employee declared pass in the Departmental Examination will be subject to any other rules eligible for promotion to the next higher grade. He is not required to appear in the same examination in future.

For promotion a Board will be constituted by the Managing Director. The Board after considering their service record shall submit its recommendation for promotion of the employees. Promotion shall be given subject to availability of vacancy.

Selection for promotion will be made from the list of employees declared pass in order of seniority in service and service record. An employee who passes the departmental examination will thus gain temporary seniority over the one who has not passed the required examination. An employee who fails in the departmental examination but subsequently passes the same will regain his original seniority. The selection for promotion will be made from up-to-date seniority list and service record. The Board will recommend the panel of list to the extent of possible vacancies that may occur during the course of the year. The promotion list will lapse after one year when a fresh list will be made by holding the Board for promotion.

2. Be it stated that the petitioner was also aspirant for the post, but she could not qualify in the selection. Be it also stated that in the written examination comprising of two papers, the petitioner attempted the first paper and she did not attempt the second paper. The petitioner having not secured the relaxed norms of 30%, she could not be selected and appointed.

3. Mr. Katakey, learned counsel for the petitioner referring to the above rule and placing reliance on the decisions reported in T. Nadu Computer SC B.Ed. G.T. Welf. Society Vs. Higher Sec. Scl. Computer Tech. Assn. and Others, and K. Manjusree Vs. State of A.P. and Another, , submits that the basic requirement of 50% of the total marks in the examination could not have been relaxed to 30%. According to him such relaxation vitiated the entire selection process and accordingly same is liable to be set aside and quashed.

4. Mr. D. Saikia, learned counsel for the respondent Bank on the other hand submits that the promotion was due for the last 10 years and there being stagnation, the qualifying marks as envisaged in Rule 25 (a) of the aforesaid Rules had to be relaxed to 30%. He further submits that even after extending such relaxation, the petitioner could not qualify. According to him, the petitioner having not attempted the 2nd paper, she is estopped from making any challenge to the selection and appointment of the private respondents. He further submits that the resolution of the Board of Directors to relax the qualifying marks to 30% from 50% having not been challenged, the writ petition is not maintainable.

5. To buttress the above argument, Mr. D. Saikia, learned counsel appearing for the respondent Bank has placed reliance on decisions reported in M. Venkateswarlu and Others Vs. Govt. of A.P. and Others, and Union of India (UOI) and Others Vs. Deo Narain and Others, .

6. The decisions on which Mr. Katakey, learned counsel for the petitioner has placed reliance pertains to recruitment process in the matter of direct recruitment In K. Manjushree (supra), the Apex Court was concerned with the recruitment rules in respect of direct recruitment. It was noticed that the ratio of 3:1 pertaining to written and oral interview was changed to the: ratio of 4:1. The marks for written examination therefore proportionally scaled down to maintain 3:1 ratio. The marks were relaxed for appointment of A.P. State Higher Judicial

Service and the Apex Court was concerned with the Statutory Rules, namely A.P. State Higher Judicial Service Rules, 1958.

7. In the other case, i.e. Tamil Nadu Computer Science BED Graduate Teachers Welfare Society (supra), as against the prior decision that those; who secured qualifying marks of 50% would be called for subsequent stages of the selection, but later on the persons who secured 35% marks were also called for verification of services. It was held that aforesaid decision of the Govt. changing the qualifying norms by reducing the same to 35% from 50% after holding the examination, was not sustainable.

8. Unlike the aforesaid two cases, in Deo Narain (supra), on which Mr. Saikia, learned counsel for the respondent Bank has placed reliance, the Apex Court was concerned with the case of promotion. Referring to the relaxation clause of the Rules, it was held that in exercise of the said rule, the Central Govt. was empowered to relax the provision of rules.

9. In M. Venkateswarlu (supra), dealing with similar provision of relaxation, it was held that the authority was empowered to extend the relaxation in appropriate cases. In that case, the particular incumbent was lacking in the minimum length of service, but the same was relaxed in exercise of the power of relaxation.

10. In Sandeep Kumar Sharma Vs. State of Punjab and others, , the Apex Court observed that the power of relaxation even if generally included in the service rules could either be for the purpose of mitigating hardships or to meet special and deserving cases. It was further held that rules of relaxation must get a pragmatic construction so as to achieve effective implementation of a good policy of the Govt.

11. In the instant case, the Administrative Council of the Bank in its meeting held on 01.12.2009 resolved to extent the relaxation of marks to 30% from 50% considering the fact that there was large number of vacancies unfilled for long 10 years and candidates were available to fill up the posts. However, it was extremely difficult to get candidates seeking 50% marks. In such a situation, the Bank decided to lower the qualifying marks from 50% to 30% and when the petitioner did not secure the said qualifying marks, she could not be promoted. She did not even try the second paper. However, learned counsel for the petitioner submits that when petitioner could realise that she would not secure the qualifying marks of 50%, she had abandoned the second paper.

12. So far as the power of relaxation of the Bank is concerned, learned counsel for the respondents have referred to Rule 120 of the aforesaid Rules which reads as follows:

120. Where no specific provision has been made in these Rules in respect of any matter, the relevant rules of the State Govt. relating to such matter shall be followed as far as practicable.

13. Mr. D. Saikia, learned counsel for the respondent Bank submits that since the Bank is an instrumentality to the State Govt., as per the aforesaid provision, the Bank is entitled to fall back on the Rules of the State Govt. relating to such matter when there is no specific provision. Referring to the rules of relaxation of the said Rules, he submits that such power of relaxation is available with the Bank.

14. However, Mr. Katakey, learned counsel for the petitioner submits that there being specific provision, i.e. 50% prescription for qualifying marks, the said provision could not have been invoked. I am not inclined to accept the said submission inasmuch as it is one thing to say that rule 25 (a) specifically provides for 50% qualifying marks, but it is altogether a different thing to invoke such a relaxation.

15. It is not the case of the petitioner that but for the promotion of the private respondents, her chance of promotion in any way has been affected. The fact of the matter is that the petitioner could not even secure the relaxed marks. Having regard to the fact that there was stagnation for the last 10 years for which the Bank was suffering, the Bank authority decided to relax the qualifying marks. I do not find any reason to interfere with the same. In view of the above, I do not find any merit in the writ petition. Accordingly it is dismissed. There shall be no order as to costs.

