(1992) 05 AHC CK 0069

In the Allahabad High Court

Case No : C.M.W.P. No. 80406 of 1990

Khar Bhan Ram — APPELLANT

Vs

General Manager, Punjab National Bank and Others — RESPONDENT

Date of Decision : 12-05-1992

Acts Referred:

Punjab National Bank Officers Service Regulations, 1979 — Regulation 15, 16, 16(2), 16(3)

Citation : (1992) 65 FLR 647 : (1993) 1 LLJ 263

Hon'ble Judges : B. Dikshit, J

Bench : Single Bench

Advocate : G.D. Mukherjee, for the Appellant; K.L. Grover, for the Respondent

Final Decision : Allowed

Judgement

B. Dikshit, J.—A Management Trainee of Punjab National Bank (in short'' Bank) appointed in Junior Management Grade has challenged the Order of termination of his services passed by Regional Manager, Punjab National Bank, Varanasi (in short Regional Manager).

2. Counter-affidavit and Rejoinder Affidavit being exchanged, the learned counsel for the parties agreed that the petition can be disposed of at this stage of admission and, therefore, it is being disposed of at this stage according to Rules of the Court.

3. The essential facts are that petitioner was appointed Management Trainee in Junior Management Grade at Bank on July 28, 1986 after being selected at an examination conducted by Banking Service Board, which is the selection body for appointment on the post of Management Trainees in Junior Management Grade of all the nationalised Banks. The initial appointment was on probation of two years which could be extended for a period not exceeding one year. The terms and conditions in paragraphs 2, 3 and 4 of the letter of appointment relevant for this petition, were as follows:

"2. Training/Probation, Confirmation.--You will be on training/probation for a period of two years from the dale of your joining the Bank and you will be considered for confirmation in service, subject to your satisfactory report on your training, passing Bank''s confirmation lest and receipt of satisfactory report from the police authorities about your character and antecedents. You may also be required to pass a test in a language other than your mother tongue before confirmation.

3. During the period of probation your services can be terminated by giving one month''s notice or payment of one month''s emoluments in lieu thereof. The Bank may, however, in its discretion extend your probation by a further period not exceeding one year. If you desire to leave the services of the Bank at any time, during the period of probation including the extended period thereof, you shall pay a month''s emoluments to the Bank.

4. General

You will be governed by the Punjab National Bank Officer Employees (Conduct) Regulation 1977, Punjab National Bank Officer Employees (Discipline and Appeal) Regulations 1977 and Punjab National Bank (Officers) Service Regulations 1979 and other rules and conditions of service laid down by the Bank from time to time for its officers. The Bank reserves the right to revise the rules and conditions of service from time to time.

While petitioner was on probation, the petitioner was called upon by Bank authorities to appear on May 29, 1988 at an examination of the Bank known as ''Confirmation test''. Petitioner appeared but failed to qualify. Subsequently, the Bank authorities by letter dated August 22, 1989 informed petitioner that his probation period has been extended till August 25, 1989 and called upon petitioner to appear at confirmation test to be held on October 1, 1989. Petitioner appeared at the test but again failed to qualify. As petitioner failed to qualify the test the Regional Manager informed petitioner that petitioner''s probation period was extended till December 21, 1990 and he is being given last opportunity to qualify at next confirmation test, which was to be held in the year 1990. The petitioner was then informed by Bank authorities that the Bank proposed to hold confirmation test on August 19, 1990 and in case petitioner failed to qualify at the test or remained absent then Bank will have no option except to terminate service of petitioner. The petitioner appeared at the test held but once again he failed to qualify. It was then that the Regional Manager by letter dated September 4, 1990 informed petitioner that the petitioner failed to meet the terms and conditions prescribed for confirmation in the service of bank. The Regional Manager also informed the petitioner by said letter that the petitioner will cease to be in service of the bank with immediate effect as it was not possible to consider petitioner for confirmation and competent authority has decided to terminate the services of petitioner in accordance with terms and conditions of appointment. The petitioner has challenged order of termination of his service by this writ petition.

4. The learned Counsel for petitioner advanced two fold arguments. The first argument advanced is that the petitioner was allowed to continue beyond the period of three years from the date of initial appointment while maximum probation period of an officer under Punjab National Bank (Officers) Service Regulations, 1979 (in short Regulations) cannot exceed three years. It was argued that the petitioner will be deemed to have been confirmed with efflux of time due to his continuance beyond three years and his service could not be terminated treating him to be on probation. The second argument of learned Counsel for the petitioner is an alternative argument. The argument is that it is beyond the scope of power of Bank authorities to make it compulsory for every officer to qualify at confirmation test of the Bank before he can be confirmed. It has been argued that the Regulations do not provide for qualifying at any confirmation test before an officer is confirmed. It has been argued that the test for confirming an officer provided under Regulations is different from what has been applied by Bank. The contention has been that the test provided under the Regulation is that of satisfactory completion of training in the opinion of competent authority and therefore, the bank authorities could not lay down a different test namely confirmation test, the qualifying of which has been made compulsory by the Bank.

5. The learned Counsel for the Bank in opposition argued that the Regulations do not provide for deemed confirmation of an officer allowed to continue beyond three years and, therefore, petitioner could not be deemed to have been confirmed merely because he was continued on probation for more than three years. He argued that in absence of an order of confirmation by competent authority, the petitioner continued on probation and, therefore, the Bank authorities rightly terminated his service treating him to be a probationer. He further argued that so far present case is concerned, the petitioner''s period of probation was extended beyond three years by way of grace so that he could have another attempt as last chance to qualify confirmation test and, therefore, also the petitioner cannot derive any advantage due to his continuance on probation beyond three years. To meet the second argument advanced on behalf of petitioner, the learned counsel for the Bank argued that the system of having qualifying examination/confirmation test before confirming'' an officer was part of integral working of the Bank and could be provided by appropriate orders by the Bank. It was argued that the requirement of qualifying at confirmation test did not violate any provision of Regulation and, therefore, the said requirement was valid under law, which was laid down well within the scope of power possessed by Bank administration. The argument of learned Counsel for parties give rise for deciding the following two questions:

(i) Whether under Regulation 16 of the Punjab National Bank (Officers) Service Regulations 1979, an officer appointed on probation, whose period of probation is extended beyond three years, will stand confirmed on expiry of three years period as probationer ?

(ii) Is it within the scope of power of Board of Directors of the Bank to provide confirmation test to be conducted by Bank making it compulsory to qualify before confirming an officer even when Regulations do not provide for any such confirmation test for confirming an officer ?

6. The answer to first point depends on the interpretation of Regulations 15 and 16. The Regulations have been framed by Board of Directors of the Bank in consultation with the Reserve Bank of India with previous sanction of Central Government in exercise of power u/s 19 read with Section 12(2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Regulations 15 and 16 read as follows:

"Probation: (25) (1) An Officer directly appointed to the Junior Management Grade shall be on probation for a period of two years.

(2) An employee of the Bank promoted as an Officer in the Junior Management Grade shall be on probation for one year.

(3) An officer appointed to any other grade shall be on probation for such period as may be decided by the Bank.

Provided that the competent authority may, in the case of any officer, reduce the period of probation or dispense with probation.

Officers on promotion from one grade/scale to another grade/scale shall be on probation for a period of one year.

Confirmation: (16) (a) An Officer shall be confirmed in the service of the Bank if, in the opinion of the competent authority, the officer has satisfactorily completed the training in any institution to which the officer may have been deputed for training and in-service training in the Bank.

Provided that an officer directly recruited to the Junior Management Grade may be required also to pass a test in a language other than his mother tongue.

(2) If in the opinion of the competent authority an officer has not satisfactorily completed either or both the training referred to in sub-regulation (1) or if the officer has not passed the test referred to therein, the officer''s probation may be extended by a further period not exceeding one year.

(3) Where during the period of probation including the period of extension, if any, the competent authority is of the opinion that the officer is not fit for confirmation,

(a) in the case of a direct appointee, his services may be terminated by one month''s notice or payment of one month''s emoluments in lieu thereof, and,

(b) in the case of a promote from the banks services, he may be reverted to the grade or cadre from which he was promoted."

7. From bare reading of the two regulations it is apparent that an officer, who

has been directly appointed to Junior Management Grade shall be on probation for two years and the extension of probation is permitted for a period not exceeding one year. Regulation 16(2) forbids competent authority to extend the period of probation beyond one year by using the words "the officer''s probation may be extended by a further period not exceeding one year." This means that the maximum period for which an officer of Bank could be on probation is three years. Regulation 16 (3) (a) provides that if the competent authority during the period of probation including the period of extension, is of the opinion that the officer is not fit for confirmation then the services of the Officer directly appointed as in the present case, may be terminated by one month''s notice or payment of one month''s emoluments in lieu thereof. The prohibition contained in Regulation 16(2) to extend the probation period not exceeding one year read with Regulations 16 (3) makes it clear that the competent authority has to take a decision either to confirm an officer or to terminate his service within the expiry of extended period of probation. It casts an obligation on competent authority to take a decision either way. Regulation 16 (2) is mandatory and, therefore, no extension of period of probation can be ordered from time to time exceeding one year.

8. For what has been said by me above, I am of the view that the competent authority is forbidden by Regulations to extend the period of probation beyond one year, yet in present case the competent authority extended petitioner''s probation period from time to time so that the extended period exceeded one year. This is apparent from admitted facts. Admittedly, petitioner was appointed on probation for two years on July 28, 1986 and his probation period was extended from time to time after expiry of two years so that extension remained effective till February 13, 1990 on which date his services were terminated. The continuance of petitioner under extension of probation period from time to time exceeding one year is the bone of contention of petitioner for claiming that he stood confirmed under the Regulations and the termination of his services treating him to be probationer is bad in law.

9. As stated earlier, Regulation 16 (2) forbids extension of probation period exceeding one year. As the extension of probation period exceeding one year is beyond the scope of power of the competent authority, it is not possible to take a view that petitioner was on probation even after expiry of one year of extended period. Regulation 16 (2) is mandatory, the import of which is that in no way an officer can be continued on probation beyond three years from the date of appointment, two years being initial probation period with extension not exceeding one year. Besides there being prohibition under Regulation 16 (2) in respect of extension of period of probation exceeding one year in all, Regulation 16(2) also provides for confirmation of a probationer if he has completed his training satisfactorily while Regulation 16(3)(a) provides that if on expiry of probation period including period of extension the competent authority is of the opinion that the officer who has been directly appointed is not fit for confirmation, his services may be terminated. Considered in the light of such

mandate by authority framing regulations, any extension of probation period exceeding one year is void. For said reasons I hold that the extension of probation period of petitioner upto one year is valid and beyond that it is void.

10. The next aspect which requires consideration is the effect of continuance of petitioner on extension beyond one year. The view I have taken earlier is that the petitioner cannot be treated on probation beyond one year and extension beyond one year being void, the continuance of petitioner on the post held by him entitles him to be treated as confirmed, on the principles of automatic confirmation. As petitioner was a confirmed officer, the services of petitioner could not be terminated by competent authority treating him to be on probation. The learned Counsel for Bank relied upon case of Municipal Corporation, Raipur Vs. Ashok Kumar Misra, which does not apply as in that case no outer limit for probation appears to be provided by relevant rule.

11. The view expressed by me finds support from law enunciated by Supreme Court of India in the case of State of Punjab Vs. Dharam Singh, in following words:

"5. In the present case, Rule 6 (3) forbids extension of the period of probation beyond three years. Where, as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in that post as probationer by implication. The reason is that such an implication is negatived by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication."

12. Following the principle of law enunciated in the case of State of Punjab v. Dharam Singh (supra) the Supreme Court of India in the case of Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others,

"4. In the instant case the order of appointment promoting the appellant to the post of Commercial Officer merely indicated that his probationary period could be extended and he could be reverted to the post of Office Superintendent without any notice. Stipulation for extension of probationary period in the appointment order must be considered in accordance with the proviso to Regulation 17 (1) which means that the probationary period could be extended for a period of one year more.

Undisputedly, on the expiry of the appellant''s initial probationary period of one year, the appointing authority extended the same for another period of one year which also expired on September 4, 1982. During the period of probation appellant''s services were neither terminated nor was he reverted to his substantive post, instead he was allowed to continue on the post of Commercial

Officer. On the expiry of the maximum probationary period of two years the appellant could not be deemed to continue on probation, instead he stood confirmed in the post by implication. The appellant acquired the status of a confirmed employee on the post of Commercial Officer and the appointing authority could not legally revert him to the lower post of Superintendent."

13. In concluding part of the Judgment on page 149 the Court further held that:

"In view of the above discussion it is manifestly clear that the appellant''s services were regulated by the U.P. Co-operative Societies Employees Service Regulations 1975. Since under those Regulations appellant''s probationary period could not be extended beyond the maximum period of two years, he stood confirmed on the expiry of maximum probation period and thereafter he could not be reverted to a lower post treating him on probation. The order of reversion is illegal. We accordingly allow the appeal, set aside the order of the High Court and quash the order of reversion dated September 2, 1983 and direct that the appellant shall be treated in service and paid his wages and other allowances. The appellant is entitled to his costs which is quantified as Rs. 1,000."

14. From what has been said above, I hold that the petitioner stood automatically confirmed on expiry of three years from the date of appointment and competent authority committed manifest error in terminating his services treating him to be on probation.

15. So far second point is concerned, the learned counsel for the Bank justified termination of service of petitioner treating him to be on probation. He argued that as petitioner could not qualify confirmation test of the Bank provided as pre-requisite for confirmation as an internal working the petitioner was rightly treated to be on probation for termination of his services. It was in opposition to the argument of the learned counsel for petitioner who had submitted that the Board of Directors of the Bank did not have any power for providing confirmation test and making it a prerequisite condition compulsory for confirming an officer of junior management grade. It has been argued that as Regulations of the Bank lay down criterion for confirmation of an officer wherein neither confirmation test is provided nor qualifying at any such test has been made pre-requisite condition for confirmation, therefore, the confirmation of petitioner could not be withheld for not qualifying at the test. The confirmation of petitioner could be ordered or refused only on the basis of criterion laid down in regulations.

16.The condition of qualifying the examination of Bank known as confirmation test has been laid down by Board of Directors by an administrative order. No such confirmation test finds place in Regulations of the Bank. The Regulations have been framed by the Board of Directors in discharge of legislative functions. They have been framed after consultation with Reserve Bank of India and with previous sanction of Central Government in exercise of power u/s 19 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. The criterion for confirming an officer of Junior Management Grade laid down in

Regulation 16 (1) is that the officer shall be confirmed if in the opinion of competent authority he has satisfactorily completed the training. The proviso to Regulation 16 (1) permits a language test in a language other than mother tongue. It is not the case of the Bank that the confirmation test which petitioner could not qualify, was the language test as contemplated under Proviso to Regulation 16 (1). There is no other Regulation providing for qualifying at any examination before an officer on probation could be confirmed. The introduction of confirmation test and making it compulsory for every officer to qualify before an officer could be confirmed is an addition to the conditions for confirmation laid down by Regulations. It is a variation in conditions of service of an officer for confirmation. The Board of Directors has added such condition in discharge of its executive functions which could not have been done. Such confirmation test cannot be justified as part of internal working of the Bank, as its power can be traced to the executive power of the Board of Directors to administer. The power conferred on Board of Directors to frame Regulations u/s 19 of the said Act being legislative in nature an administrative order cannot supersede it and, therefore, once the Regulations have laid down the criterion for confirmation of an officer then it was obligatory for Bank authorities to consider the officer''s confirmation in accordance with conditions laid down in Regulations. It is well settled that an executive instruction of an authority cannot over-ride rules or regulations framed in discharge of its legislative functions. So far present case is concerned, I hold that the Board of Directors exceeded its executive power in providing the confirmation test without getting the Regulations amended suitably. As the variation in the conditions for confirmation laid down in Regulation stand varied by addition, the addition is not a matter of internal working of the Bank and it is to be considered void ab-initio. It cannot be given effect while considering the question of petitioner''s confirmation. Thus the argument of the learned counsel for the Bank that petitioner is to be treated to be on probation in view of his failure to qualify at confirmation test, also fails.

17. For the aforesaid reasons the impugned order dated November 8, 1990, of the Regional Manager, Punjab National Bank, Regional Office, Varanasi (Anneuxre-5 to the writ petition) is quashed. The petitioner is declared to be confirmed officer as Management trainee of Punjab National Bank with effect from July 28, 1990 and is entitled for all the benefits, which he would have received, had his services been not terminated by impugned order.

The writ petition is allowed with costs.