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(2013) 07 PAT CK 0027

In the Patna High Court

Case No : CWJC No. 10416 of 2013

Kundan Kumar — APPELLANT

Vs

The Chairman, Uttar Bihar Gramin Bank Head Office and Others — RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2013) 4 PLJR 674

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Binay Kumar Singh, for the Appellant; Mahendra Pathak, for the Respondent

Judgement

Rakesh Kumar, J.—Heard Mr. (Dr.) Binay Kumar Singh, learned counsel for the petitioner and Sri Mahendra Pathak, learned counsel, who has appeared on behalf of all the Respondents. The petitioner, while invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for issuance of writ of mandamus directing the Respondents to accept his joining on the post of Officer JMG Scale-I in the Respondent Bank.

2. Short fact of the case is that the petitioner, who is an Ex-Servicemen, had applied for the post of Office Assistant (Multi Purpose, Group)-Group-B and also for the post of Officer JMG Scale-I-Group-A pursuant to an Advertisement issued by Respondents/Uttar Bihar Gramin Bank. Thereafter, the petitioner appeared in the written examination, which was first conducted in respect of the post of Office Assistant on 4th March, 2012. He qualified in the written examination and appeared before the Interview Board and finally got selected for the post of Office Assistant. The Respondent/Bank, thereafter, issued appointment letter on 7.8.2012. The petitioner on the strength of appointment letter joined the post of Office Assistant. Pursuant to the same advertisement, the petitioner had applied for the post of Officer JMG Scale-I, for which written examination was held on

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18.3.2012. In the written examination, for the post of JMG Scale-1, the petitioner qualified and he was interviewed on 21.1.2013. Finally, he was selected for the post of JMG Scale-1 vide Annexure-5 to the writ petition. The Respondent/Bank, thereafter, issued appointment letter in favour of the petitioner for the post of Officer JMG Scale-1 on 19.4.2013 and he was directed to join on 8.4.2013 (sic). However, when he went for joining, it was refused by the Bank. Finally, the petitioner approached this Court by filing the present writ petition with a prayer to direct the Respondents to allow the petitioner to join the post of Officer JMG Scale-1.

3. In this case, a counter affidavit has been filed on behalf of Respondents/Uttar Bihar Gramin Bank. Sri Mahendra Pathak, learned counsel for the Respondents, in view of stand taken in the counter affidavit submits that the petitioner has rightly been denied joining in view of the fact that the petitioner was not eligible for appointment since as per Note (2) of advertisement, which prescribes definition regarding Ex-Servicemen, the petitioner had ceased to enjoy the status of Ex-Service-men. It has been argued that the petitioner had already joined the post of Office Assistant pursuant to the advertisement i.e. Annexure-1 to the writ petition. He submits that once the petitioner had joined the post of Office Assistant, he was not entitled for his joining on the post of Officer, JMG Scale-1. Learned counsel for the Bank has specifically referred to conditions i.e. Note (2) of the Advertisement i.e. Annexure-1 to the writ petition. He submits that since the petitioner had ceased to be an Ex-Serviceman, he has rightly been denied joining the new post of Officer JMG Scale-1. Learned Counsel for the Bank submits that the writ petition is fit to be rejected.

4. Sri (Dr.) Binay Kumar Singh, learned counsel for the petitioner submits that on the date of submitting the application pursuant to advertisement, the petitioner was Ex-Serviceman, as prescribed in the advertisement itself. He submits that the condition imposed in the advertisement was applicable on the date of submitting the application. Obviously on the date of submitting the application, the petitioner was Ex-Serviceman. He further submits that though the petitioner had simultaneously filed application for both the posts, i.e. Office Assistant and Officer JMG Scale-1, result of the same was not published simultaneously, and result of Officer JMG Scale-1 was published subsequently. Since first result was published in respect of post of Office Assistant, the petitioner joined the post of Office Assistant, but the appointment of the petitioner on the post of Office Assistant was not permanent and regular and he was appointed on provisional basis. He submits that only on the ground that the petitioner was appointed provisionally, he cannot be ceased from the status of Ex-Servicemen.

5. Besides hearing the parties I have also perused the materials available on record. Before proceeding further, it would be appropriate to quote definition of Ex-Servicemen (EXSM), which was incorporated in the advertisement issued by the Bank i.e. Annexure-1 to the writ petition, whereby applications were invited for appointment, which is quoted hereinbelow:--

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Definition of Ex-Servicemen (EXSM):--

(i) Ex-Servicemen: Only those candidates shall be treated as Ex-Service-men who fulfil the revised definition as laid down in Govt. of India, Ministry of Home Affairs, Deptt. of Personnel & Administrative Reforms notification No. 36034/5/85/ Est (SCT) dated 27.10.1986 as amended from time to time.

(ii) Disable Ex. Servicemen (DISXS): Ex-Servicemen who while serving in Armed Forces of the Union were disabled in operation against the enemy or in disturbed areas shall be treated as DISXS.

(iii) Dependents of Ex-Servicemen killed in action(DXS): Servicemen killed in the following operations would be deemed to have been killed in action attributable to military service (a) war, (b) war like operations or Border Skirmished either with Pakistan on cease fire line or any other country, (c) fighting against armed hostilities in a counter insurgency environment, viz Nagaland, Mizoram etc. (d) serving with peace keeping mission abroad, (e) laying of clearance of mines including enemy mines as also mine sweeping operation between one month before and three months after conclusion of an operation, (f) frost bite during actual operations or during the period specified by the Government, (g) dealing with agitating para military forces personnel, (h) IPKF Personnel killed during the operations in Sri Lanka.

Note:--1. Candidates still serving in Defence Services and desirous of applying under Ex-Servicemen category should submit a certificate from the competent authority that they would be released/retired on or before 30.6.2011.

2. An Ex-Servicemen who has once joined a Government job on civil side after availing of the benefits given to him as an Ex-Servicemen for his re-employment including a job in the Public Sector Undertaking ceases to enjoy ex-servicemen status for further employment.

3. Ex-Servicemen candidates who have already secured employment under the Central Govt. in Group ''C & ''D'' will be permitted the benefit of age relaxation as prescribed for Ex-Service-men for securing another employment in a higher grade or cadre in Group ''C''/''D'' under the Central Govt. However, such candidates will not be eligible for the benefit of reservation for Ex-Servicemen in Central Govt. jobs.

6. After examining Clause-2 of Note of the definition, it is evident that once an Ex-Servicemen has joined a job in the Public Sector Undertaking or Central Government on civil side, he is not entitled to claim as Ex-Servicemen. It is evident that at the time, while the petitioner had applied against reserved post of Ex-Servicemen, he was Ex-Servicemen and he was not reemployed. Meaning thereby that at the time of submitting application for appointment in the Bank, he was quite eligible. From the advertisement, it is further evident that there was no restriction for applying for the two posts and, as such, the petitioner had submitted application for both posts i.e. Office Assistant (Multi-purpose) and

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Officer JMG Scale-I. The written examination for both the posts were held. Of course, after interval of few days i.e. on 4th March, 2012 written examination was held for the post of Office Assistant (Multi-purpose) and on 18.3.2012 written examination was held for Officer JMG Scale-I. Similarly, final result was published in respect of Office Assistant (Multi-purpose) prior to final result in respect of Officer JMG Scale-I. The petitioner was selected for both posts. Since he was earlier offered appointment letter against the post of Office Assistant (Multipurpose), he joined the post and immediately thereafter while he was asked to join the post of Officer JMG Scale-I, he approached the authority for his joining and he was refused on the plea that he has been ceased to be Ex-Servicemen since he was re-employed as Office Assistant (Multi-purpose). The Court is of the opinion that the condition contemplated in the advertisement i.e. Annexure-1 to the writ petition, regarding Ex-Servicemen was applicable at the time of submitting application and once the petitioner was qualified as Ex-Servicemen on the date of submitting application, at subsequent stage the petitioner would not have been refused his joining on the ground that he had ceased to enjoy the Ex-Servicemen status. Fact remains that he was eligible on the date of submitting application and he qualified in both the examinations, which were conducted by the same Bank and, as such, the reason, which has been assigned in the counter affidavit for refusing joining of the petitioner, is not sustainable in the eye of law.

7. Accordingly, the writ petition stands allowed with direction to the Respondents to allow the petitioner for his joining on the post of Officer JMG Scale-I in accordance with law. It is made clear that all the formalities must be completed within a period of six weeks from the date of receipt/production of a copy of this order. With above observation and direction, the writ petition stands allowed.

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