

(2011) 08 MAD CK 0183

In the Madras High Court

Case No : Writ Petition (MD) No. 11628 of 2005 and W.P. (MP) (MD) No's. 12371, 12373, 12375 of 2005

M. Urkalan

APPELLANT

Vs

The General Manager, Personal Administration Department,
Indian Overseas Bank, Central Office, Chennai-2 and Others

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3)

Citation : (2011) 08 MAD CK 0183

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : V.R. Venkatesan, for the Appellant; N.G.R. Prasad, Advocate for Respondent-1 and M/s. M.V. Venkateseshan, Advocate for Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice Vinod K. Sharma

1. In all these Writ Petitions a common question of law and act is involved, therefore they are being disposed of by a common order.
2. For the sake of brevity, the facts are taken from the affidavit filed in W.P. No. 11628 of 2005.
3. The petitioner joined as Clerk with the Indian Overseas Bank, and has put in 26 years of service. The petitioner earned a good reputation from superiors, as well as from the general public while discharging his duties.
4. The petitioner is the Assistant General Secretary of All India Indian Overseas Bank Employees SC/ST Welfare Association, and also the member of National Executive Committee of Indian Overseas Bank Employees Union.
5. It is the case of the petitioner, that he is not a member of All India Indian

Overseas Bank Employee's Trade Union or any other Union, though was earlier a member of All India Overseas Bank Employees Union.

6. The petitioner on account of difference of opinion with the Executive members of All India Overseas Bank Employees Union questioned the activities of the union on several aspects, and being dissatisfied with the working, he along with majority of employees left that union. That since the leaving of membership by the petitioner members of minority is not getting justice at par with majority union members in promotion and other matters.

7. The petitioner challenges the promotion of respondent No. 2 to 103, on the ground that all these employees belong to All India Overseas Bank Employees Union, thus were favoured in selection.

8. On 28.7.1986, a memorandum of settlement was arrived at u/s 12(3) of the Industrial Disputes Act, 1947 before the Regional Labour Commissioner, between the management and All India Overseas Bank Employees Union, with regard to the promotion from clerical cadre to the officer cadre Junior Management Grade Scale-I and temporary entrustment of junior Supervisory duties. The terms of settlement entered into between the parties were as follows:

1. Promotion of employees in the clerical cadre in the officer cadre (i.e.) junior manager shall be by way of two process namely A and B

2. The petitioner in these writ petitions claim to be falling under category of process A which reads as under:

PROCESS "A"

(A) 50% of the promotions to the officer cadre shall be on the basis of a written test in Banking Law and Practice and English. As far as possible question will cover all areas of Banking Topics in Banking Law and Practice in which candidates are to be tested shall be advised by the bank by way of circulars while calling for applications. The test will be of the objective type (except English) and will be conducted by NIBM

(b) ELIGIBILITY

All Employees who have completed ten years of service and above in the clerical cadre in the bank (except pure record keepers whose qualification is less than VIII standard) shall be eligible to apply for the written test, under this Process. However, in respect of SC and ST Employees the minimum qualifying service shall be relaxed by a period not exceeding one year and two years respectively.

After drawing the list of eligible candidates as per the above clause, the total number of eligible candidates to be called for the written test under process A shall be in the ratio of 1:2 i.e., if hundred vacancies are to be filled under this process, 200 eligible and willing candidates according to strict bank seniority (in the order of their dates of joining the bank in the clerical cadre or as the case may be) from the respective lists are to be called proportionately for the test.

For this purpose, seniority lists will be maintained separately for general, SC and ST candidates.

Eligible candidates who wish to be considered for promotion through this process shall make an application, upon the management's issuing a circular calling for such application. Those who do not make such applications, within the prescribed time limit or after having applied for the test do not appear for the test (irrespective of the reasons) will be deemed to have not opted for that particular promotion chance

(iii) ALLOTMENT OF MARKS SHALL BE ON THE FOLLOWING BASIS:

Written Test :

65%

Service :

25*

Qualification :

5*

Workman's performance :

5%

In the branch

100

* The service mark shall be given as under:

No. of completed years of service

Total marks

10 and 11 @

5

12

10

13

15

14

20

15 and above

25

** Marks for qualifications shall be given as under:

(a) Graduation from Recognized University or its equivalent 1 mark or

Post graduation or double graduation 2 marks

or

(b) CAIIB/CAIB (London) - Part I 1 mark

CAIIB/CAIB (London) 3 marks

@ In respect of Ex-servicemen employees with a service 6 to 11 years, SC employees with the service 9 to 11 years and ST employees with service 8 to 11 years (if they are otherwise eligible to apply for promotions) 3 marks shall be allotted for their service.

(iv) Selection of employees who have appeared for the written test shall be on the basis of aggregate marks obtained in the test together with the marks allotted for service, qualifications and workmen's performance in the branch. However, this will be subject to the number of vacancies declared under this process and subject to obtaining a minimum of 35% of marks in the aggregate. In respect of workmen belonging in SC/ST the minimum marks shall be relaxed up to 25% of aggregate, if need be.

Employees who have a minimum of 10 years of service in the clerical cadre shall opt for consideration under either process A and Process "B" and this option shall be irrevocable for that particular set of promotions. However workmen who opt for Process "A" but who do not come within the Zone of consideration of twice the number of vacancies shall be called for the test under process "B" unless they specifically express their unwillingness for the same.

(v) WAITING LIST:

A Waiting list shall be prepared (consisting of workmen who qualify but cannot be immediately promoted for want of vacancies) to the extent of 10% of the vacancies declared under this process. The Waiting list will contain names in the order of aggregate marks obtained subject to the minimum qualifying marks for general standards. If any vacancy arises due to non acceptance of an offer of promotion or due to reservation of a promote from the officer's cadre to the clerical cadre during the period of probation (pertaining to process "A") the bank shall fill up such vacancy by promoting the next eligible person in the order of merit from the aforesaid list.

The waiting list shall remain in force for 15 minutes or till the date of issuance of the circular for a subsequent set of promotions, whichever is earlier.

9. The case of the petitioner is that though the said process was smoothly functioning, the respondent No. 1 issued a circular memo No. 7 (F) 55 of 1990-91 of 31.7.1990 to all Indian branches to regional and zonal office regarding promotion to official cadre through that circular. Vide circular, it was

decided as stood under:

(a) 250 vacancies (i.e., 50% of 500) will be filled up by process "A" of the settlement, dated 28.7.1986.

(b) 250 vacancies (i.e., 50% of 500) will be filled up by process "B" of the settlement, dated 28.7.1986.

The test for both Process "A" and "B" shall be on the basis of written test in Banking law and practice and English (both objective type) and further prescribed the eligibility that for the purpose of determining the educational qualification and the number of years of service required in each process and further they fixed the eligible date on 31.7.1989. As per the circular, the allotment of marks shall be on the following basis:

Written test :

75 marks

service :

15 marks*

Qualification :

5 marks*

Workmen's performance in the Branch/office

5 marks

100 marks

* 2 Marks for each completed year of service in the clerical cadre in the bank over and above three years of service, subject to a maximum of 15 marks.

** 1 Mark for Graduation from a recognized University or its equivalent.

Or

2 Marks for Post Graduation or double graduation

and

1 Mark for Part I CAIIB/CAIB (London)

or

3 Marks for CIIB) CAIB (London)

10. That at the instance of All India Overseas Bank Employees Union, first respondent entered into fresh, memorandum of settlement, dated 15.5.2001, before the Assistant Labour Commissioner Central-I, provincing as under:

PROCESS "A" Seniority Channel

PROCESS "B" Merits Channel

(i) 40% of promotions to the officer cadre (JMCS-I) shall be on the basis of bank seniority and interview. For the purpose of identifying the employees for the interview and promotion under this quota, the following shall be the basis.

(ii) ELIGIBILITY

All employees who have completed 18 years of service in the clerical cadre in the bank (except record keeper and shroff/Record Keeper whose qualification is less than VIII standard) shall be eligible to apply for interview under this process. However, in respect of SC and ST Employees, the minimum qualifying service shall be relaxed by a period not exceeding one year and two years respectively.

After drawing the list of eligible candidates as per the above clause, the total number of eligible candidates to be called for the interview under process "A" shall be in the ratio of 1:4 (i.e., if 100 vacancies to be filled under this process, 400 eligible and willing candidates according to strict bank seniority in order of dates of joining the bank in the clerical cadre or the date of the promotion to the clerical cadre as the case may be from the list are to be called proportionately for interview. In the event of employees having equal bank seniority, the employee who is senior in age will have the preference.

For this purpose, separate seniority list will be maintained for general, SC/ST employees. Eligible candidates who wish to be considered for promotion through this process shall make an application, upon the management's issuing a circular calling for such applications. Those who do not make such applications within the prescribed time limit or after having applied for interview do not appear for interview (irrespective of the reasons) will be deemed to have not opted for that promotion process

(iii) Allotment of Marks:

Marks shall be allotted on the following basis:

Marks Interview

50

Educational qualification

05

Confidential Report

05

Service

35

Weightage for Rural Service

03

Entrustment of Duties of Special Assistant/Stenographer

02

Total

100

(iv) Marks for Educational Qualification shall be given as under:

(a) Graduation from Recognized University or its equivalent 01 Mark

or

Post Graduate/L.L.B or equivalent Degree for which graduation is the minimum qualifications

or

Degree/P.G. Diploma in Computer Science from Recognized University 02 Mark

And

CAIIB/CAIB (London) Part-I 01 Mark

or

CAIIB/CAIB (London) 03 Marks

(v) The service mark shall be computed as under:

No. of completed years of service

Total marks

18

05

19

10

20

15

21

20

22

25

23

30

24 and above

35

However in respect of SC employees with the service of 17 to 18 years and ST employees with the service of 16 to 18 years (if they are otherwise eligible to apply for promotion) five marks shall be allotted.

In pursuance to statutory settlement dated 18.05.2001, the cases for promotion were considered. The petitioner also participated in the selection process, but was not selected, whereas respondent Nos.2 to 103 was selected for promotion.

11. The learned counsel for the petitioners challenged the promotion of respondent No. 2 to 103 by contending that the selection process was out come of the mala-fides of respondent No. 1, as in the select list the preference was given to majority Union and employees of other union have been ignored.

12. Even though the allegations of mala-fides are leveled but no officer has been impleaded as party.

13. The contention of the learned counsel for the petitioners is that this is a legal malice, which can be inferred from the select list, placed on record, showing that the promoted employees belong to one union only.

14. This contention of the learned counsel for the petitioner, cannot be accepted as in the common counter, filed to the Writ Petition, in paragraph 9, the details have been disclosed, showing that the persons from the different union have been promoted. The allegation of malafide are required to be specific and supported by material particulars, vague allegation of malafides without impleading necessary party cannot be looked into. No finding of malafide can be recorded on presumption, specifically when factual allegations are rebutted by filing affidavit.

15. The next contention of the learned counsel for the petitioner is that the procedure adopted for selection on the face it was arbitrary, as excessive marks were fixed for interview, which cannot be sustained in law.

16. In support of this contention, the learned counsel for the petitioner contended that total 100 marks were fixed for, adjudging the suitability for promotion, and out of 100 marks, 50 marks were kept for interview, 5 marks for educational qualification, 5 marks for ACR, 35 marks for service record, 3 marks for rural service, 2 marks for special assignment. The contention of learned counsel was that 50 marks out of 100 marks for interview were excessive, therefore selection stands vitiated.

17. In support of this contention, the learned counsel for the petitioner placed reliance on the judgment of the Honorable Supreme Court in the case of (1) Krishan Yadav and another Vs. State of Haryana and others, , (2) Mohinder Sain

Garg Ors. Vs. State of Punjab and Others, , Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, (4) Munindra Kumar and others Vs. Rajiv Govil and others, (5) P. Mohanan Pillai Vs. State of Kerala and Others, (6) AIR 2006 SC 3243 (Badrinath vs. Government of Tamil Nadu and others) (7) Union of India (UOI) and Another Vs. A.K. Narula, .

18. On consideration of the matter, I find no force in the contention of the learned counsel for the petitioner.

19. Once it is not disputed that the selection was based only on interview, without holding any written test, fixing of 50 marks for interview cannot be said to be arbitrary to hold the selection to be bad.

20. In all the judgments relied on by the learned counsel for the petitioners, the Honorable Supreme Court was considering the selection, wherein, written test was to be followed by interview.

21. The Honorable Supreme Court therefore considered the question whether viva voce marks could be fixed to override the selection process of written test. The fixing of higher marks for viva voce which could negate the written test, were held to be arbitrary.

22. In the present case, selection, was only on the basis of interview. Therefore, it was open to the respondent to fix 100% for interview, no fault can be found in having 50% marks for the interview.

23. This view finds support from the judgment of the Honorable Supreme Court in the case of Anzar Ahmed Vs. State of Bihar and others, , wherein, the Honorable Supreme Court, held as under:

The decisions of the Supreme Court with regard to fixation of marks for interview in a selection broadly fall in two categories (i) selection for admission to educational institutions; and (ii) selection for employment in service. The personally traits of students seeking admission for admission to educational institutions are not fully developed and therefore greater importance has to be given to written examination than to viva voce but in case of appointment to public service, recruitment has to be made from persons of mature personality. The observations in Lita Dhar Case indicate that question of weightage of marks to be attached to interview vis-a-vis marks for written examination can arise only when written examination as well as viva voce test are both accepted as essential features of selection. There also no hard and fast rule retarding the precise weightage to be given to viva voce test as against written examination can be laid down. The weightage must vary according to the requirements of service.

The question of weightage to be attached to viva voce would not arise where the selection is to be made on the basis of interview only. Decision in Ashok alias Somana Gowda case cannot be construed to mean that the principles which govern the allocation of marks for interview in a selection based on written and

viva voce test would also apply to a selection where no written test is held but the selection is based on interview only.

24. The learned counsel for the petitioner thereafter contended that on the declaration of the result, the petitioner made representation, to the higher authority which they have failed to answer, thus are guilty of not performing the supervisory function over their subordinates.

25. This contention is again misconceived.

26. There was no statutory duty on the supervisory officer to deal with the representation which had no statutory force of law, The representation having no force of law, and filed out of frustration of being not selected, are not required to be answered.

27. Merely because, the representation filed by the petitioners has been ignored, cannot lead to a conclusion that the supervisory officers failed in their duties.

28. The contention of the learned counsel for the petitioners is that zone of consideration was increased from 1:2 to 1:4, therefore the promotional list deserve to be set aside, also deserves to be rejected for more than one reason.

(i) Firstly, the petitioner having participated in selection is now stopped from challenging the criterion of selection.

(ii) Secondly the ration 1:4 cannot be said to be arbitrary criteria, so as to hold the select list to be bad in law.

29. The learned counsel also disputed the facts stated in the counter affidavit, this cannot be gone into in this Writ as it is now well settled law that this Court cannot go into the disputed question of facts, in exercise of writ jurisdiction.

30. For the reasons stated, this Court finds no merit in the Writ Petition. "Dismissed". No costs.

31. Consequently, connected Miscellaneous Petitions are dismissed.