
(2005) 05 CAL CK 0009
In the Calcutta High Court
Case No : F.M.A. No. 186 of 2003

Managing Director, Bharatiya Reserve Bank Note Mudran Pvt. Ltd. APPELLANT

Vs

Sri Sajal Talukdar RESPONDENT

Date of Decision : 18-05-2005

Acts Referred:

Citation : (2005) 1 ILR (Cal) 534

Hon'ble Judges : Soumitra Pal, J;D.K. Seth, J

Bench : Division Bench

Advocate : Hirak Kumar Mitra and Soumen Sen, for the Appellant; Shyamal Kr. Das, for the Respondent

Final Decision : Dismissed

Judgement

Soumitra Pal, J.—This is an appeal filed by the Bharatiya Reserve Bank Note Mudran Pvt. Ltd. against the order passed by the learned Single Judge allowing the writ petition and directing the Respondents to appoint the Petitioner in the post concerned.

2. The facts are that pursuant to an advertisement published on October 28, 1996 the writ Petitioner, who is the Respondent herein, applied for the posts of Maintenance Assistant (Grade-1) and Electrical/Electronic and Process Assistant (Grade-1). The Petitioner appeared in the written examination. Thereafter, on February 20, 1997 the Institute of Banking Personnel Selection (for short "IBPS") issued a letter asking/advising the Petitioner to appear for interview. The Petitioner appeared, By a letter dated July 27, 1998 it was intimated that the name of the Petitioner had been recommended by the I.B.P.S. and accordingly it was included in the waiting list of candidates on the basis of educational qualifications and work experience declared by the Respondent. It was further intimated that the mere inclusion of the name in the waiting list would not confer any right to be appointed. Since there was no response, being apprehensive the Respondent herein made a representation before the Appellant and came to

learn that he was not favoured with an employment as he did not fulfil the eligibility criterion prescribed in the advertisement. Thereafter, being aggrieved, the Petitioner moved a writ petition praying for direction upon the Respondents to give effect to the letter dated July 27, 1998 and to take steps for appointing the Petitioner in the post of Process Assistant (Grade-1). Pursuant to directions affidavits were filed. The learned Single Judge by its judgment and order dated July 16, 2002 allowed the writ petition. Thus, the instant appeal.

3. Mr. Hirak Kumar Mitra, learned Senior Advocate, appearing for the Appellant along with Mr. Soumen Sen relying on the judgment of the Apex Court in *Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another*, submitted that since the Respondent herein had acquired the National Apprenticeship Certificate (for short "NAC") in November, 1997 that is much after the last date of advertisement viz. November 23, 1996, the candidature was liable to be cancelled. Submission was made that the letter dated April 7, 1999 does not categorically state that the course pursued by the Respondent was equivalent to the course as stipulated in the advertisement dated October 28, 1996. It was submitted that the essential qualification prescribed was a certificate from any recognized I.T.I. or N.A.C. in binding/mechanical/electrical/electronics to make one eligible for appearing for the said post. Since in the call letter for personal interview dated February 20, 1997 it was categorically mentioned that candidates of ineligible candidate would be liable to be cancelled at any stage, the same was accordingly cancelled.

4. Mr. Shyamal Kumar Das, learned advocate for the Respondent, drawing attention to the certificates submitted that on the date of publication of the advertisement the candidate did possess the necessary qualification. He drew our attention to the photocopies of the certificates dated August 20, 1995 and August 23, 1996 appearing at pages 34 and 35 respectively of the writ petition, which was placed before us during hearing. He submitted that the said certificates satisfied the qualifications prescribed in the advertisement. The N.A.C. certificate at page 43 of the paper book, according to him, was an additional qualification and in no way affected the eligibility of the Petitioner who already had the necessary qualifications mentioned in the advertisement. Drawing attention to column 1(d) of the call letter for personal interview dated February 20, 1997, it was pointed out that the Respondent was requested to bring the original certificate and testimonials of educational qualification and any other certificates and in Clause 2 it was indicated ineligible candidates were barred from appearing in the interview. It was submitted that after being satisfied with the testimonials, the I.B.P.S. had allowed the Respondent to appear in the interview. Submission was made that the Respondent did possess the qualification. Since he had been selected and as the name of the Respondent had been empanelled, directions should be issued for appointment. Reliance was placed on the judgments of the Supreme Court in *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, and *Bhagwan Singh and Another Vs. State of Punjab*

and Others, in support of his contentions.

5. After hearing the learned advocates for the parties, we find that the issue is whether the Respondent herein had acquired the qualification after the date of advertisement. The relevant portion of the advertisement which appears at pages 32, 33 and 34 of the paper book, runs thus:

Process Assistant (Grade III)

Qualification : Essential S.S.C. with 60% marks and certificate from any recognized ITI with 50 % mark or NAC with 45% marks in Bindary/Mechanical Engg./ Electrical/Electronics or Diploma in Mechanical Engg./Electrical/Electronics....

How to Apply : Those who satisfy the eligibility norms may submit their applications specify in the prescribed format....

Applications duly completed in all respect may be sent to I.B.P.S. Post Box No. 8232, Motilal Nagar Post Office, Gorgaon (W) Mumbai 400 104, so as to reach on or before 23rd November, 1996.

6. It is not disputed that the Respondent secured 60% marks in the S.S.C. examination. Now the question arises whether the Petitioner had a certificate from any recognized Industrial Training Institute-I.T.I. - with 50% marks. From a perusal of the annexures in the paper book as well as the copy of the writ petition, it appears that the Respondent underwent a training in Mechanical Radio and T.V. from August 1, 1993 to July 31, 1995 in an institute attached to Advanced Training Institute, Calcutta, Dasnagar, Howrah and had passed the trade test. The Respondent secured 437 marks out of 700 marks - which is well above 50 per cent. Thereafter, the Advanced Training Institute, Government of India, Ministry of Labour, Directorate of Employment and Training had issued the certificate on August 20, 1995. Thereafter, the Petitioner underwent a full time course of Advanced training on "Digital Electronics with Industrial Appliances" from August 5, 1996 to August 23, 1996 in the 1996-97 session consisting of related theory and practice under the Advanced Vocational Training System, completed the course "satisfactorily" and a certificate was issued on August 23, 1996 by Advanced Training Institute, Calcutta under the Ministry of Labour, Government of India.

7. Neither it is disputed that the Petitioner has secured less than 50 per cent marks nor that Advanced Training Institute is not a recognized Industrial Training Institute. However, it is the qualification which is disputed. We find there was no bar in the advertisement that a candidate having a certificate of Mechanical (Radio and T.V.) was ineligible to the said post. Since the Respondent was having a certificate in Mechanical (Radio and T.V.) from a recognized I.T.I. with requisite marks, we are of the opinion that he did possess the essential qualification and fulfilled the criteria on the date of advertisement. Moreover, we find that as the Respondent was successful in the written test he was selected for interview. In

the call letter for personal interview dated February 20, 1997, the I.B.P.S. requested the Respondent to bring the original certificates and testimonials relating to educational qualification. It was specifically mentioned that ineligible candidates would not be allowed to appear at the interview. In the interview he produced the certificates. Thereafter, being successful in the interview, the name of the Respondent herein by letter dated July 27, 1998 was recommended by the I.B.P.S., Mumbai and accordingly it had been included in the waiting list of candidates. It goes to demonstrate that even at the stage of interview, the I.B.P.S., the authority in charge of recruitment, was satisfied with the testimonials about the eligible qualification. Thus, we are of the view that the learned Single Judge was right in holding that the authority upon being satisfied with the qualification selected him to the post concerned.

8. The ratio laid down in the judgment of the Apex Court in *Ashok Kumar Sharma and Ors. v. Chander Sekhar and Anr.* (Supra) is not applicable in the facts of this case, as the Respondent herein was having the prescribed qualification on the date of advertisement. The judgment of the Supreme Court in *Bhagwan Singh and Anr. v. State of Punjab and Ors.* (Supra) relied on by the learned advocate for the Respondent is applicable to the extent that there too the Apex Court did not take a different view from the Expert Committee which selected the candidate as it had found the possession of an M.D. in Pharmacology by the candidate concerned as an adequate compliance with the academic qualification prescribed. The judgments of the Apex Court in *Dalpat Abasaheb Solunke* (Supra) and *Km. Neelima Misra* (Supra) are not applicable to the facts and circumstances of this case as in the former it was held that the Courts should not sit on appeal on the comparative merits of the candidates and in the latter case it was held that the Courts should not interfere with the opinion expressed by the experts in the absence of malafide alleged against the experts. In the case at hand, we are neither sitting on appeal on the comparative merit of the candidates nor are we interfering with the opinion expressed by the experts. Thus, as the Respondent had possessed the necessary qualification as prescribed, the deletion of the name of the Respondent by the Appellant was unjustified. The qualification which appears at pages 43 of the paper book does not in any way affect the qualification which he had already acquired on the date of advertisement. At best it was additional qualification. Moreover, the Respondent being successful at the written test was called for in the interview where he produced the certificates, as sought for, which were accepted.

9. In our view, on the face of the testimonials, the stand taken by the Appellant does not seem to be bona fide and is perverse on the face of the certificates produced and no one could take a different view unless biased or driven by mala fides. The writ Petitioner Respondent, by reason of such stand on the part of the Appellant, has suffered not only financial loss but also enormous mental agony. In the circumstances we direct that the Appellant shall restore the benefit of the selection of the writ Petitioner/Respondent by treating him to have been appointed On the date he was entitled to be appointed on the basis of selection

and be given all service benefit fictionally and notionally as if he was in service, including seniority and increments etc. as available to his immediate junior had he been given the appointment on the basis of the selection and shall be entitled to compensation @ Rs. 1,000.00 per month from the month of the judgment appealed against viz. July, 2002 and till the date of his appointment and full salary from the month next after the expiry of four weeks from the communication of the order.

10. Hence, the judgment and order of the learned Single Judge is affirmed. The appeal is dismissed. The Appellants are directed to appoint the Respondent herein as directed above within a period four weeks from the date of communication of this order.

11. There will be no order as to costs.

12. Let the copy of the writ petition filed by the learned advocate for the Respondent herein be kept with the records.

13. Urgent xerox certified copy of this judgment and order be given to the appearing parties, if applied for, on priority basis.

D.K. Seth J.

14. I agree.

[on May 18, 2005] Later

15. After the above judgment is delivered, it is submitted by Mr. Sen that the life of the Panel has since been expired. It is because of the stand taken by the department that such a situation has been brought about, therefore, the expiry of the life of the Panel will not affect this decision that the appointment shall be given treating the same for the particular purpose of this case locating the Panel to be valid on the date, when the appointment is supposed to be given to Respondent in terms of this Order.

16. Xerox plain copy of the operative part of the judgment and this order be given to the learned advocates of the respective parties on their usual undertaking duly counter-signed by the Assistant Registrar (Court).