

(2019) 07 CAL CK 0041

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 16211 (W) Of 2014

Naba Kumar Biswas

APPELLANT

Vs

Bangiya Gramin Vikash Bank & Ors

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Citation : (2019) 07 CAL CK 0041

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Debabrata Saha Roy, Indranath Mitra, Subhankar Das, Kamalesh Bhattacharyya, Anindya Bhattachayya, Kaushik Chanda, A. Samanta

Final Decision : Dismissed

Judgement

Amrita Sinha, J

The petitioner is serving as the Office Attendant (Gr-C) in the Bangiya Gramin Vikash Bank. He seeks promotion to the post of Office Attendant (Gr-B).

A selection process was initiated by the respondent Bank to fill up the vacancies as on 31st March, 2013 in accordance with the Regional Rural Banks

(Appointment and Promotion of Officers and Employees) Rules, 2010.

The petitioner participated in the online test along with other candidates which was held on 19th January, 2014. The said online test was conducted by

the Institute of Banking Personnel & Selection. The petitioner was directed to appear before the Interview Board on 7th February, 2014. A final list of

selected candidates was published wherein the name of the petitioner did not appear. The list contained the name of several candidates who were

junior to the petitioner in the inter se seniority list published by the Bank.

The petitioner is aggrieved due to non-inclusion of his name in the merit list of candidates eligible for promotion.

The petitioner submits that the examination lacked transparency and even though the petitioner fared very well in the written test as well as the

interview his name has been deliberately kept out from the zone of consideration.

The petitioner submits that as per the aforesaid Rules the selection was to be made on the basis of marks obtained on combined performance in the

written test and the interview. Out of total 100 marks, 70 marks were allotted for the written test and 30 marks for the interview. 40% in aggregate

was the minimum cut-off marks required for being eligible for promotion.

The petitioner relies upon the final compilation sheet for promotion annexed by the respondent Bank in their affidavit in opposition. With reference to

the said compilation sheet it has been submitted that though the petitioner obtained 31 marks out of 70 marks in the written test, but he was awarded

only 7 marks out of 30 marks, in the interview.

It has been submitted that, the candidates who secured very poor marks in the written test have been given proportionate marks in the interview, so

that they can be made eligible for promotion. It has been submitted that only a handful of candidates secured more marks than the petitioner in the

written test, but intentionally and deliberately they have been given more marks, than the petitioner, in the interview.

It has been submitted that as the written examination was conducted online by the Institute of Banking Personnel and Selection, accordingly the Bank

did not get any chance to fidget with the marks obtained by the candidates in the written examination. As the interview was conducted by the

Interview Board consisting of the members of the Bank accordingly there was enough scope for nepotism. It has been submitted that the final

compilation chart lacks transparency and smacks mala fide.

The petitioner relies upon the decision delivered by a five Judge Bench of the Honâ??ble Supreme Court in the matter of A Jay Hasia â??vs- Khalia

Mujib Achravardi & Ors. reported in AIR 1981 SC 487 paragraph 19 where the Honâ??ble Supreme Court observed that a strong suspicion is

created in the mind when there is gross difference in the marks obtained by a candidate in the written examination and in an interview. It may have

been that the marks awarded in the viva voce examination may have been

manipulated with a view to favour the candidates who ultimately came to be selected. The Supreme Court cautioned the concerned authorities that though they did not interfere with the academic year in question, but the

selection made for the subsequent academic years would run the risk of invalidation, if such a high percentage of marks are allotted for the interview.

The petitioner further refers to a decision of the Honâ??ble Supreme Court in the matter of Bishnu Biswas & Ors. â??vs- Union of India & Ors.

reported in (2014)5 SCC 774. The Court disapproved of prescribing higher percentage of marks for interview even when the selection has been made

on the basis of the written test as well as the interview. The Court emphasised that for the purpose of admission in an educational institution the

allocation of interview marks would not be very high, but for the purpose of employment, allocation of marks for interview would depend upon the

nature of the post.

The petitioner prays for cancellation of the selection process as the same suffers from lack of transparency and further prays for consideration of his

case for promotion.

The learned advocate appearing on behalf of the respondent bank submits that the selection for the post in question, was to be made, taking into

consideration the combined score obtained by a candidate, both in the written test as well as the interview. Though the petitioner scored better marks

in the written test but he scored poorly in the interview. The combined score of the petitioner does not meet the qualifying score for selection and

accordingly the case of the petitioner could not be considered for promotion.

He submits that it is highly possible that the petitioner did not fare properly before the Interview Board and accordingly he scored poorly. He submits

that for promotion to a higher post the conduct of the employee becomes very relevant. The conduct, behaviour, personality, desirability and approach

of an employee can be judged only at the time of personal interview and the same will not be evident from the score obtained in the written

examination. It is for this reason that the combined score of the written test as well as the interview is taken into consideration for the purpose of

granting promotion to an employee.

It is not unnatural for a candidate who may not have scored very high in a written examination to score fairly good marks in an interview. The

combined score is what that matters, and not the scores obtained separately in the written test and the interview.

The learned advocate placed reliance upon the observation of the Honâ??ble Supreme Court made in the case of Bishnu Biswas (supra) wherein the

Court observed that for the purpose of employment, allocation of marks for interview would depend upon the nature of the post. He defends the

marks awarded to the petitioner in the interview and prays for dismissal of the writ petition.

Upon hearing the submission made on behalf of both the parties, it appears that, prior to appearing in the selection process the petitioner was aware

about the allocation of marks in the written examination and in the interview. The petitioner did not question the said allocation of 30 marks in the

interview, prior to taking part in the selection process. Being unsuccessful in the selection the petitioner has raised the plea of allocation of high marks

i.e. 30 marks out of 100 marks in the interview.

The petitioner filed a separate writ petition challenging the Rules pursuant to which the selection process was conducted. In the said writ petition the

petitioner challenged the allocation of marks. It has been submitted, however, that the petitioner did not succeed in the said writ petition. That being the

position, it is no longer open for the petitioner to raise the issue of allocation of marks in the selection process, all over again.

Being unsuccessful in the other writ petition, the petitioner makes an alternative argument that the marks that has been awarded to him in the

interview is highly disproportionate to the marks that he obtained in the written examination. Though a bare perusal of the combined score sheet raises

doubt with regard to the comparative marks obtained by the candidates in the written examination and in the interview, but the same may not be a

determinative factor to pass an order in terms of the prayers made in the writ petition.

From the final compilation sheet it appears that, there were four members in the Interview Board, and more or less, in respect of most of the

candidates the marks given by all four of the interviewers are the same. Barring a few, all the four members have given equal marks to all the

candidates. The final compilation sheet shows that from serial no. 33 onwards the marks awarded in the interview, to the selected candidates, are the

bare minimum marks required for qualifying in the selection. At least 21 candidates obtained a combined score of 40 marks, though all of them obtained less marks than the petitioner in the written examination. The petitioner has been awarded 7 marks by all the four members of the Interview Board.

At the same time it is noticed that though the candidate in serial no. 55 obtained more marks, than the petitioner, in the written examination but he obtained less marks than the petitioner in the interview, and the candidate appearing at serial no. 57 obtained the same marks as obtained by the petitioner in the written test as well as in the interview.

The selection process in question was initiated in the year 2013. Pursuant to order passed by the Court one post has been kept vacant.

The Constitution Bench of the Honâ??ble Supreme Court in the case of Ajay Hasia (supra) even though came to the conclusion that the marks awarded in the viva voce examination might have been manipulated, stopped short of scrapping the selection process, by giving a word of caution to the selectors. The Court thought it fit not to exercise their discretion in setting aside the selection after a lapse of about 18 months, since that would cost immense hardship to candidates who were selected in the said selection process.

The Court observed, that if the interview of the candidates is tape recorded, for in that event, there will be contemporaneous evidence to show, what were the questions asked to the candidates by the Interviewing Committee and what were the answers given which led to their elimination. By this way, a lot of unnecessary controversy will be eliminated, besides acting as a check on the possible arbitrariness of the Interviewing Committee.

In the case at hand, scrapping the entire panel would amount to dislodging a large number of candidates who were successfully selected in the selection process and have been rendering their service in the promotional post for nearly more than five years.

In all fitness of things and placing reliance on the dictum laid down by the Constitution Bench in the case of Ajay Hasia (supra) I am afraid that no relief can be granted to the writ petitioner at this belated stage. There are several candidates who are similarly placed as that of the petitioner in the final compilation sheet. Passing an order in favour of the petitioner, only because

of the reason he approached this Honâ??ble Court, will amount to sheer injustice to the candidates who may not have been advised to challenge the action of the respondents before the Court of law, and as such, the petitioner ought not to get any extra advantage only because he approached the High Court challenging the selection process.

The same will sent out a very wrong message to the society at large, and unsuccessful candidates will get an opportunity to file petition and make an attempt to stall the selection process by this way. There will never be an end to any selection process, as, each and every candidate can never be successful in a selection. In the present days of cut throat competition there will always be a huge number of unsuccessful candidates. The Courts will be flooded with frivolous applications and petitions filed by unsuccessful candidates, which is not desirable at all.

It is settled law, that writ petition at the instance of an unsuccessful candidate is not maintainable. The petitioner took a calculative chance to appear and participate in the selection process, and the moment he became unsuccessful, he turned around and challenged the same. The same is not permissible.

In view of the above, no relief can be granted to the writ petitioner in the instant case. The respondents shall make an endeavour to follow the observation made by the Constitution Bench of the Honâ??ble Supreme Court in the case of Ajay Hasia (supra) for tape recording the interview of the candidates to rule out unnecessary controversy and for maintaining a fair and transparent selection procedure.

W.P No. 16211 (W) of 2014 is dismissed.

Urgent certified photocopy of this judgement, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.