

(2013) 04 DEL CK 0209
In the Delhi High Court
Case No : LPA 646 of 2005

Oriental Bank of Commerce

APPELLANT

Vs

Subash Chand and Another

RESPONDENT

Date of Decision : 23-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 04 DEL CK 0209

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : Jagat Arora and Sh. Rajat Arora, for the Appellant; M.K. Vashisht, for the Respondent

Judgement

S. Ravindra Bhat, J.—In these two appeals, a common judgment and order of the learned Single Judge dated 25.02.2005, allowing W.P.(C) 7087/2003 and W.P.(C) 7096/2003 have been impugned. By the said judgment, learned Single Judge held that the Prathama Pariksha Examination qualification held by the two writ petitioners (respondents in the present appeals) were equivalent to matriculation qualification and consequently they were eligible for promotion from the post of Daftari to the post of Clerk. The brief facts are that the appellant, a public sector bank had prescribed the essential qualifications which its employees were to possess. The writ petitioners were working as Daftaris in some branches of the appellant bank. It is not in dispute that in terms of the applicable recruitment and promotion rules and policies of the bank, in order to be eligible for promotion as Clerks, the incumbent Daftaris had to be matriculates. The petitioners had contended that having qualified the Prathama Pariksha examination conducted by the Hindi Sahitya Sammelan, Allahabad, they held equivalent educational qualifications and that they were entitled to be considered. The bank rejected this contention. This led to the Petitioner's approaching this Court under Article 226 of the Constitution. The learned Single Judge relied upon the judgment of another Single Judge in Pradeep Kumar v. MCD [W.P.(C) 310/2001, decided on 01.05.2002] and held that in view of a letter of the Central Government, Ministry

of Human Resource Development, Department of Secondary and Higher Education dated 26.07.2001, the Prathama Examination qualification possessed by the petitioners was equivalent to matriculation and that they were entitled to be considered for promotion as Clerks. The bank has appealed to this Court.

2. Learned counsel for the Bank relies upon a decision of another Division Bench of this Court, i.e. MCD v. Manglesh Pal [LPA 690/2002, decided on 03.03.2006], and submits that the Division Bench had repelled an identical contention by the MCD employee, who besides other arguments, had also relied upon Circulars issued by the Central Hindi Directorate and the MCD. The Court had on that occasion relied upon the principle that declaring equivalence is the exclusive domain of the employer and that the Courts would be slow to interfere in the determination of such executive agencies. On the strength of that logic, the MCD's appeal had been allowed and the learned Single Judge's decision set aside.

3. Learned counsel for the respondents contends that in view of the letter dated 26.07.2001, which the Single Judge relied upon, the question of equivalence does not admit of any doubt. It is submitted that once the Central Government declared that the Prathama Examination qualifications were equivalent to matriculation, the banks were obliged to fall in and also treat it similarly. Any different approach adopted by the bank, a public sector unit would result in discrimination, according to learned counsel for the petitioner.

4. At the outset, it would be relevant to notice the letter dated 26.07.2001 issued by the HRD, Govt. of India. The same reads as follows:

Government of India

Ministry of Human Resource Development

(Department of Secondary & Higher Education)

New Delhi, the 26th July, 2001

NOTIFICATION (63)

No. F.24-4/2001-TS.III. On the recommendation of the High Level Committee for recognition of Educational Qualifications, the Government of India have decided to recognize the Prathama Examination being conducted by Hindi Sahitya Sammelan, Allahabad for the purpose of employment under the Central Government for the post for which the desired qualification is a pass in matriculation. The recognition is provisional for a period of 3 years after which the committee will review the recognition granted.

Sd/-

(V.S. Pandey)

Joint Secretary (f) & Member Secretary,

High Level Committee for Educational Qualifications.

5. In this case, the bank has relied upon a letter dated 10.11.2001 issued by the Indian Bank's Association of which the appellant is a member. The relevant portion of the letter reads as follows:

Indian Bank's Association

Stadium House, 6th Floor, Block 3, Veer Nariman Road, Mumbai 400 020

Phone: 2844999 (Stadium House)/2182288 (W.T.C.)

Gram: BANKSLINK Telex: 011-82373 Fax: 2835638/2184222

Website: 222.iba.org.in/www.indianbankassociation.org

No. PD/CIR/76/C1/1012

November 10, 2001

Designated Officers of Public & Private Sector Banks

Dear Sirs,

Recognition of Hindi examination

Conducted by Voluntary Hindi Organisations

XXX XXX XXX

Banks have been seeking our advise for dealing with cases of employees who acquire Hindi qualification and claim parity with regular SSLC/HSC/Graduation for purpose of promotion, increments, etc.

The matter was taken up with the Government of India for clarifications. In response to our request the Government of India, Central Hindi Directorate, Department of Secondary Education and Higher Education, New Delhi vide its letter dated 17th September 2001 has clarified that recognition given to the examinations conducted by Voluntary Hindi Organizations are only in regard to the standard of Hindi prescribed in the equivalent Hindi examination and it is not to be treated as full fledged degree/diploma or certificate awarded by University or Educational Boards as the case may be.

XXX XXX XXX

Sd/-

Himadri Dutta

Assistant Personnel Adviser

Encl: One

(emphasis supplied)

6. It is evident from the letter dated 26.07.2001 that the Central Government declared equivalence and recognized the Prathama Examination conducted by the Hindi Sahitya Sammelan, Allahabad as a matriculation qualification "for the purpose of employment under the Central Government" for the post for which the desired qualification is "a pass in matriculation". It is evident that the certificate for equivalence for the purpose of employment under the Central Government or the Union ought not, therefore, be applicable for the posts or services under the other employers. So far as equivalence of this qualification with matriculation, in banks, especially public sector banks, which are members of the Indian Bank's Association is concerned, reliance of appellant bank on the letter dated 10.11.2001 is decisive; the letter clarifies that the recognition given to the examination is only in regard to the standard of Hindi prescribed in the Hindi examination and cannot be treated as a full fledged degree or diploma by a University or Education Board.

7. This Court is also mindful of the principle that the question of equivalence is part of the conditions of service which the employer is entitled to prescribe when it frames its recruitment policies and rules. That the employer has considerable autonomy in this case and the Courts have little or no role to play has been emphasized by several judgments time and again of the Supreme Court. All of them were considered in the decision reported as *State of Rajasthan and Others Vs. Lata Arun*, The Court had then observed as follows:

12. From the ratio of the decision noted above it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for Courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.

8. In view of the above discussion, it is evident that the circular/letter dated 26.07.2001 does not universally declare that the Prathama Examination qualification held by the petitioners is recognized or directed to be universally recognized by all public sector employers as is sought to be contended by the writ petitioners. In the light of this fact and the law declared by the Supreme Court in *Lata Arun* (supra), this Court is of the opinion that the impugned judgment and order has erroneously proceeded to declare the equivalence of the petitioner's qualification with a recognized matriculation qualification. In parting, this Court notices that while the impugned judgment was stayed in LPA 646/2005, no such interim order was made in LPA 647/2005. It has also been submitted that the writ petitioner in the latter case has held the promotional post all these years. In these peculiar circumstances, the bank is directed to grant six month's time to said writ petitioner to enable him to obtain the requisite qualification. In the event of his failure to do so, the bank is at liberty to revert him to the post he originally held. This does not, however, preclude the bank, in any manner, from granting benefits which are permissible to either of the

petitioners, in law. It is further clarified that any pay or allowances drawn by the said respondent during the pendency of the Bank's appeal shall not be recovered from him on account of his having occupied the higher post. The appeals, therefore, succeed and are allowed subject to the above terms. No costs.