(2011) 11 AHC CK 0205

In the Allahabad High Court

Case No : Writ Petition No. 1298 (S/B) of 2011

Palak Modi APPELLANT

Vs

State Bank of India and others RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

State Bank of India (Officers Service) Rules, 1992 — Rule 16(2), 16(3)

Citation : (2011) 11 AHC CK 0205

Hon'ble Judges : Ritu Raj Awasthi, J;Pradeep Kant, J

Bench : Division Bench

Judgement

Hon''ble Ritu Raj Awasthi, J.—Since these two writ petitions raise the common question of law and facts, the same have been heard together and are disposed of through this common judgment.

2. Heard Mr. J.N.Mathur, learned Sr. Advocate assisted by Sri Anupras Singh as well as Mr. A.K. Dixit,, learned counsel for the petitioners, Mr. N.K. Seth, learned Sr. Advocate assisted by Sri Anurag Srivastava for the opposite party nos. 1 to 4 and Sri Sudeep Seth, learned counsel appearing for the opposite party no. 5.

3. The petitioners seek to challenge the impugned orders passed by the General Manager (NW-1), Human Resource Department, State Bank of India, Local Head Office, Moti Mahal Marg, Lucknow, discharging them from the service of the Bank.

4. The brief facts of the cases are that the petitioners were selected for appointment on the post of Probationary Officers in the State Bank of India by the Central Recruitment and Promotion Department of the State Bank of India (hereinafter referred to as the ''Bank'') by letters dated 5.5.2009. The petitioners were allotted the Lucknow Circle. The services of the petitioners in the Bank were to be governed by the SBI Officers Service Rules, 1992, as amended from time to time and the instructions/guidelines issued/other rules and regulations framed by the Bank from time to time. The probationary period of the petitioners was for a period of two years from the date of their appointment. As per the conditions

the confirmation of the petitioners in the Bank was subject to satisfactory reports from the Bank''s own sources as well as from District authorities regarding character and antecedents, satisfactory completion of the in-service training during probation and satisfactory performance in the evaluation tests to be conducted by the Bank during the probationary period. Failure in the evaluation tests twice would render them unfit for further continuance in the Bank''s service.

5. As per the policy of the Bank for confirmation in JMGS-I (Junior Management Grade Scale-I)/MMGS-II (Middle Management Grade Scale-II), it was decided to conduct a written examination for the screening process for Probationary Officers of 2009-10 batch on 27.2.2011. The petitioners including the other Probationary Officers were required to go through the screening process for being considered for confirmation in MMGS-II/JMGS-I. The confirmation test was to be held after 21 months from the date of appointment of Probationary Officers i.e. during the probationary period; (a) the Probationary Officers, who score 75% marks and above in the written test were to qualify for further process including the group discussion and interview which was of 50 marks. The Probationary Officers who score 75% marks and above in the group discussion and interview were to be confirmed in MMGS-II; (b) the Probationary Officers, who score minimum 50% marks (45% for SC/ST/PWD), but less than 75% in the written test were to be confirmed in the grade of JMGS-I; and (c) those Probationary Officers, who failed to secure minimum qualifying marks of 50% (45% for SC/ST/PWD) in the written test were to be given two options, as under:

Option-1:Candidate will be required to appear in another confirmation test on or before completion of 24th month of his/her probation and in the event of not qualifying in the re-test, his/her services will be terminated with immediate effect and he/she will be paid one month''s emoluments in lieu of one month''s notice in terms of Rules 16(3)(a) of SBI Officer''s Service Rule read with the present policy of confirmation of Probationary Officers as applicable hitherto.

Option-2: Candidate''s probation will be extended by a further period of maximum one year in terms of two periods of six months each (extending the total probation period to a maximum of 36 months) with the provision to appear in 02 more confirmation tests at 06 monthly intervals i.e. 02nd test in 27th month and 03rd test in 33rd month of his/her probation respectively.

6. The petitioners were informed about the above conditions and were instructed to appear for the screening test at Mont Fort Inter College, Near Gole Market, Mahanagar Crossing, Lucknow. The petitioners appeared in the said screening test for confirmation on 27.2.2011. The Central Recruitment & Promotion Department of the Bank declared the result of the said screening test on 10.5.2011, however, the names of the petitioners were neither found in the list of the selected candidates or in the list of the failed candidates nor in the list of the absentee candidates. In fact, when the result of the petitioners did not figure in the declared result of the screening test for confirmation, the petitioners tried to inquire about the status of their result from the Human Resource Department

of the Bank. On the said enquiry they were informed by the department that they were looking into the matter and they would be informed accordingly. However, by letter dated 14.5.2011, the Bank had extended the probationary period of the petitioners by three months i.e. upto 15.8.2011 under Rule 16(2) of SBI Officers Service Rules, 1992 (hereinafter referred to as ''Rules 1992''). Rule 16(2) of Rules 1992 reads as under:

If, in the opinion of the competent authority, an officer has not satisfactorily completed either or both the trainings referred to in sub-rule (1) or if the officer has not passed the test referred to therein or an officer''s service is not satisfactory, the officer''s probation may be extended by a further period not exceeding one year.

7. The petitioners approached the Bank for being informed about the reasons for extension of their probationary period as no adverse material regarding their work was ever communicated to them and to the best of their knowledge their work and conduct was fully satisfactory and they were at par with their batch mates.

8. The respondent-Bank, however, neither informed the reasons for not declaring the result nor the reasons for extension of their probationary period. However, the petitioners were served with the impugned orders dated 27.6.2011 of discharge from service.

9. As per the impugned orders, the services of the petitioners were discharged under the provisions of Rule 16(3) of Rules 1992 which reads as under:

16(3) Where during the period of probation, including the period of extension, if any, the competent authority is of the opinion that the officer is not fit for confirmation.

(a) in the case of a direct appointee, his services may be terminated by one month''s notice or payment of one month''s emoluments in lieu thereof, and

(b) in the case of a promotee from the Bank''s service, he may be reverted to the grade of cadre from which he was promoted.?

10. Learned counsel for the petitioners submitted that the petitioners were never informed about the unsatisfactory performance either in work or in conduct relating to their training during the probationary period. No adverse findings have been recorded or communicated to the petitioners regarding their training during the probationary period. The impugned orders do not disclose any reason for discharge from the service. Further the Bank itself has extended the probationary period of the petitioners. As such the impugned orders suffer from high handedness and arbitrariness.

11. Mr. N.K. Seth, learned Sr. Advocate appearing for the Bank submitted that the petitioners were appointed on the post of Probationary Officers by letters dated 5.5.2009. As per the conditions laid down in their appointment letters,

they were put on probation for a period of two years from the date of appointment and their confirmation in the Bank was subject to satisfactory performance in the evaluation test to be taken by the Bank during the probationary period and their failure in the evaluation tests twice would make them unfit to continue in the Bank''s service and in that eventuality their appointment would be cancelled and their services terminated by the Bank.

12. As per the policy of the Bank, the confirmation test of the Probationary Officers was to be held after 21 months from the date of appointment which would be of three and half hours duration and would carry maximum 200 marks to test their functional knowledge. The petitioners had appeared in the screening test on 27.2.2011, which was in two parts. Part-1 had 120 objective questions having five options each and had maximum 60 marks allotted for them and the composite time allowed was one hour. Part-II of the test was for descriptive answers with maximum 140 marks alloted for the same and had 28 questions and the composite time allotted for answering them was two and half hours.

13. It is further submitted that the opposite party no. 5, Institute of Banking Personnel Selection (hereinafter referred to as ''IBPS'') was entrusted with the job of conducting the screening test of Probationary Officers. The said organization is also entrusted with the task of conducting examinations in various public sectors Banks. It is an independent expert body which has an objective to develop an unbiased and efficient system for recruitment, promotion and placement services. The IBPS has pioneered a computer based scanning system in India and at present it has a capacity of scanning more than 200 thousand answer sheets in a day. It is known for assessing candidates with accuracy and this process is time tested and validated. The detection of using unfair means/ malpractices in the test is based on a very scientific and foolproof system. IBPS prepares multiple sets of test booklets which contain same questions but they appear in different order.

14. Mr. N.K.Seth contended that the respondent-Bank had received a report from the IBPS that the petitioners are suspected of having used unfair means in the confirmation test, as according to the report, out of 60 questions (Questions at Sl. No. 61 to 120), 55 answers of these two candidates matched which had 44 correct answers and 11 Identical Wrong Answers (IWW).

15. Mr. N.K. Seth asserted that as explained in IBPS Handbook the statistical probability of having 11 identical wrong answers (IWW), works out to one in 17.5 lakhs crores approximately. The obvious conclusion is that it did not and could not happen by chance at all, rather it occurred due to malicious design.

16. It is further submitted that on getting to know about the said report of IBPS, the Bank checked the seating arrangement and it was found that the petitioners were sitting in close proximity with each other which was considered to be corroborative evidence that they had used the unfair means. The Bank by its letter dated 14.5.2011 had extended the period of probation of the petitioners as

the Bank was yet to take a final decision for their confirmation.

17. It is further contended that the Bank is not required to give reasons for discharge from the service as the petitioners were on probation and as per Rule 16 (3) of Rules, 1992, the service could be dispensed with by giving one month''s notice or the salary of the notice period in lieu thereof.

18. The Bank did not find the petitioners deemed fit to confirm them in the service and, therefore, they have been discharged from the service.

19. Learned counsel for the Bank, in fact, submitted that holding of full scale enquiry into the allegations involving the misconduct may have culminated in the findings of guilt, which would have caused stigma on the petitioners. The respondent-Bank has passed the order of simplicitor discharge from the service of the probationers i.e. the petitioners which cannot be faulted with. It is also submitted that upright and honest officers are required in the Bank and they are supposed to have highest degree of integrity and trustworthiness, which is must and unexceptionable. In support of his submissions, Mr. N.K. Seth relied on a number of decisions, namely;

1. Municipal Committee, Sirsa Vs. Munshi Ram,

2. Khazia Mohammed Muzammil Vs. The State of Karnataka and Another,

3. Rajesh Kohli Vs. High Court of J. and K. and Another,

4. Awadher Kr. Singh Vs. The State of Bihar C.W.J.C. No. 10663 of 1993 Date of decision 26.11.1996

5. Basant Kr. Jha Vs. SBI & others C.W.J.C. No. 8167 of 1996 Date of decision 8.9.1997

6. Prem Parkash Kaluniya Vs. The Punjab University and Others,

7. Union Public Service Commission v. Jagannath Mishra, (2003) 9 SCC 237

8. Gyanesh Kumar and Dharmendra Singh Vs. Board of Revenue and Additional District Magistrate,

9. Tara Chand Vyas Vs. Chairman and Disciplinary Authority and Others,

10. Union Bank of India Vs. Vishwa Mohan,

11. State Bank of India and Another Vs. Bela Bagchi and Others,

20. The said judgments basically relate to three legal proposition of law that:

1. If the order of discharge in the guise of termination indicates that it is a termination simplicitor and does not cause any stigma on the employee nor is it punitive then there is no need for formal proceedings of enquiry before making such order. In case the discharge has been done on the ground of unsuitability during probation period and the impugned order ex facie is not stigmatic, the

order is not bad unless it is established that the circumstances supported by cogent material on record point out that the termination in effect was stigmatic and intended to overreach the process of law. The Apex Court has held that even the reference of unsatisfactory service while terminating the service of an employee cannot be termed as stigma,

2. In Banking business absolute devotion, diligence, integrity and honesty of a Bank employees is necessary and an employee acting in a manner unbecoming of a Bank Officer is liable to be discharged and,

3. In the cases of use of unfair means in the examination normally the Court should not interfere with the opinion of the expert body where the opinion has been formed on the conclusive evidence.

21. Sri Sudeep Seth, learned counsel appearing for the IBPS, respondent no. 5 submitted that the IBPS is the largest institution that caters to the talent and identification needs of its clients providing them end to end solutions maintaining accuracy, secrecy and confidentiality, which are the core values of the Institute. It is an autonomous body registered under the Societies Registration Act and also under the Public Trust Act. It is well recognized by the Government authorities and public sector banks for its activities. The IBPS has the practice of analyzing the responses of all the candidates appearing in the objective tests and for identifying cases of use of unfair means. The manner and rationale for identifying cases of use of unfair means is given in its booklet/guidelines. The method is given by the IBPS for the purpose of detection of use of unfair means/ malpractices in objective tests by the candidates, a copy of which is annexed as Annexure No. CA-1 to the counter affidavit filed by the opposite party no. 5.

22. It is further submitted that the method of identifying the cases of use of unfair means is an internationally accepted practice and in many countries in various examinations, candidates are identified of having used unfair means by following this method.

23. In the present case, the respondent-Institute was entrusted with the task to set the question paper and to evaluate the answer sheets. The IBPS had prepared the examination question paper and sent it to the Bank for conducting the examination in which the petitioners appeared. The Bank sent the answer sheets to the IBPS for evaluation. Based on its scientific and theoretical method for detection of use of unfair means, the IBPS sent a report to the respondent-Bank that the petitioners'' case is found to be a case of ?Use of Unfair Means is suspected? in the objective test.

24. Mr. Sudeep Seth further submitted that out of 120 questions, 2 questions were ignored for all the candidates. The petitioners had matched 84 right answers and 20 identical wrong answers (IWW) and only 14 answers were mismatched. Hence, out of 118 answers, 104 answers were the same.

25. The response pattern and right answers of the questions attempted by the

petitioners and the analytical data was sent to the Bank with the report by the IBPS that it is a case of ?Use of Unfair Means is suspected.

26. Mr. Sudeep Seth also submitted that the method adopted by the IBPS in evaluating the answer sheets and the procedure adopted to detect the use of unfair means/malpractices in objective test cannot be doubted. The IBPS is an expert body and the Court should not sit over the decision of the expert body.

27. Sri J.N.Mathur, learned Sr. Advocate appearing for the petitioner Palak Modi in reply submitted that the perusal of booklet/guidelines issued by the IBPS, a copy of which is annexed as Annexure No. CA-1 to the counter affidavit filed by the opposite party no. 5, clearly indicates that a pair of candidates who have 12 or more questions with identical wrong answers in a test falls in the category of use of unfair means (i.e. IWW 12 or more) and establishes the case of use of unfair means. However, even as per the respondents the petitioners had only 11 identical wrong answers out of 120 questions and as such they were in the category of ?Use of Unfair Means is suspected?.

28. Submission is that as per the criteria adopted by the respondents in case of ?Use of Unfair Means is suspected?, the Board/organization shall further scrutinize these cases on the basis of performance in the descriptive papers (if any) and performance of the interview.

29. His contention is that in cases where use of unfair means is not established and it is only suspected the respondents should ascertain the same by evaluating the performance in the descriptive papers and thereafter they could have formed any opinion with regard to use of unfair means in the objective test by the petitioners. But the Bank did not evaluate the answer books of the descriptive papers of the petitioners and in a most arbitrary and illegal manner passed the impugned orders by forming an opinion that the petitioners had used the unfair means in the objective test held for the confirmation merely on suspicion and without any conclusive evidence.

30. We have considered the submissions made by the parties'' counsel and gone through the records.

31. The short question involved in the instant writ petitions is that whether the Bank while forming an opinion of use of unfair means in the screening test by the petitioners on the basis of the report submitted by the IBPS was required to have evaluated the performance of the petitioners in the descriptive papers before coming to the conclusion that they had used unfair means in screening test and on that basis discharge them from the service?

32. There is no denying fact that the petitioners were working on probation in the Bank and as per the policy of the Bank they were required to appear in the screening test for confirmation in JMGS-I (Junior Management Grade Scale-I)/ MMGS-II (Middle Management Grade Scale-II). The respondent-Bank was not required to give reasons while discharging the petitioners from service as the

petitioners were admittedly, working on probation. Though the respondent-Bank had the discretion to hold a full-fledged enquiry with regard to the allegations of use of unfair means by the petitioners in the screening test but the Bank''s decision not to hold the said enquiry cannot be faulted with.

33. However, the respondent-Bank on the basis of the report submitted by the IBPS that the petitioners are the case of ?Use of Unfair Means is suspected? has taken a decision to discharge the petitioners from service and the procedure prescribed for detection of use of unfair means/malpractices in the objective test by the candidates clearly provides that where ?Use of Unfair means is suspected? the Board/Organization may further scrutinize these cases on the basis of performance in the descriptive test (if any) and the performance in the interview. The Bank has not disclosed any other reason in its counter affidavit for discharge of the petitioners as such we are of the considered opinion that the Bank should have evaluated the performance of the petitioners in the descriptive paper as well as in the interview, if any, before taking any decision in this regard.

34. It is to be noted that in the booklet/guidelines provided by the respondent No. 5, for detecting cases of use of unfair means/malpractices in objective tests by the candidates, it is given in detail as to which case will fall in the category of established case of use of unfair means and which case will fall in the category of use of unfair means suspected. The relevant portion of aforesaid guideline is reproduced below:

4. Based on the above considerations while establishing a case for use of unfair means, we consider the following two important criteria:

(A) 1.The pair of candidates has 12 or more questions with identical wrong answers in a test. (i.e. 1WW 12 or more).

2. The number of questions with different responses is small i.e.less than 5 in the test (Mismatches 5 or less).

The above criteria leaves out some candidates who might have resorted to unfair means but may have very high score on the test(s). For example, a pair scoring 39 or above in a test of 50 items will have 11 or less questions wrongly answered. In this case IWW cannot exceed 11. In order to examine whether high scoring candidates have resorted to unfair means, different criteria are used. Those pairs of candidates are picked up who have 90% or above questions (45 out of 50) with matching answers. This group is considered on the following two criteria.

(B) 1. 1WW 5 or more (for 50 items test)

2. 1WW 7 or more (for 75 items test)

3. Mismatch 5 or less (for 50 items test)

4. Mismatch 7 or less (for 75 items test)

The candidates under criteria (A) are established cases of use of unfair means beyond all reasonable doubts.

In the cases of candidates under criteria (B) use of unfair means is suspected. The Board/Organisation may further scrutinize these cases on the basis of:

1. Performance in the Descriptive Paper (if any)

2. Performance in the Interview.

35. Moreover, it is relevant to mention here that the report of respondent no. 5 was sent on the basis of the aforesaid guidelines and following the procedure prescribed in the said guidelines, the respondent no. 5 had reported to the Bank that the petitioners are suspected of having used unfair means in the objective test, as such we think that it was incumbent upon the Bank, while accepting the report of the respondent no. 5, to have followed the procedure prescribed in the aforesaid booklet/guidelines in order to ascertain the use of unfair means by the petitioners.

36. Since even as per the case of the respondents at the most the petitioners were suspected of use of unfair means only it would have been appropriate that the respondent-Bank had scrutinized the case of the petitioners further on the basis of their performance in the descriptive paper and only thereafter take a decision as to whether the petitioners were guilty of use of unfair means or not.

37. Mr. N.K.Seth, learned Sr. Advocate, on the basis of instructions, has fairly admitted that the performance of the petitioners in the descriptive papers, which was held simultaneously with the objective test was not evaluated. Since even as per the report submitted by the respondent no. 5, the use of unfair means by the petitioners was only suspected and not confirmed, we are of the view that the decision of the respondent-Bank to discharge the petitioners after forming the opinion that they had used unfair means in the objective type screening test for confirmation was not proper. The respondent-Bank was required to scrutinize the cases of the petitioners further on the basis of their performance in the descriptive paper and interview (if any). No person shall be adversely affected merely on the basis of suspicion. It is a cardinal principle of law that unless and until the charge or guilt is proved, a person cannot be condemned or punished.

38. In this view of the matter, we are of the considered opinion that the orders impugned are not sustainable in the eye of law. The writ petitions are liable to be allowed, they are accordingly allowed.

39. The impugned orders of discharge of the petitioners dated 27.6.2011, contained in Annexure Nos.1, to the writ petitions are hereby quashed with the direction to the respondent-Bank to examine and evaluate the descriptive papers of the written examination of the petitioners held for the screening process for Probationary Officers 2009-10 batch on 27.2.2011 and scrutinize the case of the petitioners on the basis of performance in the said descriptive papers and interview, if any, and thereafter take a decision with regard to use of unfair

means by the petitioners and consequently pass appropriate orders in accordance with law. Till a fresh decision is taken in this regard, the petitioners shall be allowed to continue in service on the post of Probationary Officers.

40. No order as to costs.

