
(2001) 02 P&H CK 0138
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2758 of 2000

Punjab State Cooperative Bank Employee Union	APPELLANT
Vs	
State of Punjab	RESPONDENT

Date of Decision : 22-02-2001

Acts Referred:

Punjab Cooperative Financing Institutions Service Rules, 1958 — Rule 5
Punjab Co-operative Societies Act, 1961 — Section 69

Citation : (2001) 02 P&H CK 0138

Hon'ble Judges : S.S. Sudhalkar, J; Mehtab S. Gill, J

Bench : Division Bench

Advocate : Mr. Kanwaljit Singh, for the Appellant; Mr. Anil Sharma, DAG, Punjab and Mr. D.V. Sharma, for the Respondent

Judgement

S.S. Sudhalkar, J.—The petitioners are the employees union and four employees of the Punjab State Cooperative Bank Limited (hereinafter referred to as the "Apex Bank"). Respondent No. 5 was appointed as a Junior Clerk in the Jalandhar Central Cooperative Bank (hereinafter referred to as "Jalandhar Bank"), She was appointed on 1.6.1984. In June, 1985, she came on deputation with the Apex Bank. She continued to be on deputation upto 31.7.1989. On 2.2.1990 she was again taken on deputation for one year and the term of the deputation was extended for one year. Her turn for promotion as Senior Clerk came in May, 1991 in the Jalandhar Bank. The Apex Court Bank wrote a letter that in case she wanted to remain on deputation, she will have to forego her promotion. Respondent No. 5 declined to forego the promotion as Senior Clerk ill Jalandhar Bank. Hence she was relieved from Apex Court Bank on 27.6.1991. However, after a week, she made a request for being sent on deputation with the Apex Bank vide letter dated 4.7.1991. She was allowed to serve in the Apex Bank on deputation w.e.f. 17.8.91 and she joined as Senior Clerk on deputation in the Apex Bank on 27.8.1991. Her last term for deputation was to expire on 26.8.99.

2. In the meanwhile, on the basis of the recommendations of the Fourth Pay

Commission and acceptance thereof by the Punjab Government, the Supervisory officer of the Apex Bank adopted the instructions dated 11.6.1998 issued by the Punjab Government for its employees. The relevant part of the instructions is as under :-

"Regarding change of Cadre:-

A Govt. employee of Distt. level cadre can exercise his option, once in his service period, to the District where husband/wife of the said employee is serving in Govt. or private sector. The seniority of the said employee who exercises his option will not be disturbed."

It was adopted by the Apex Bank by resolution No. 49 dated 22.10.1998. However, vide resolution dated 28.4.1999 the adoption of the instructions was withdrawn by the Apex Court.

3. Respondent No. 5 made an application for absorption in the Apex Bank with the benefit of seniority from the date of her joining the bank on deputation i.e. from 27.8.1991. The Board of Directors of the Apex Bank rejected her request on 6.1.1999. Respondent No. 5 made a representation to the Registrar, Cooperative Societies, Punjab, respondent No. 2, who decided that she could be absorbed in the Apex Bank if she consented to lose her seniority of Jalandhar Bank. This was the decision of respondent No. 2. It is dated 22.3.1999.

4. Thereafter, respondent No. 5 filed a Revision u/s 69 of the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as "the Act") before respondent No. 1. The revision was allowed vide order dated 22.2.2000 and respondent No. 5 was ordered to be absorbed in the Apex Bank with seniority as senior Clerk w.e.f. 27.8.1991.

5. The petitioners have challenged this order in the revision by way of this writ petition.

6. Separate written statements have been filed by respondent No. 2, Nos. 3 and 4 and respondent No, 5.

7. Respondents No. 2 and 5 have contested the petition and have challenged the averments made in the writ petition. Respondents No. 3 and 4 have given an application for amending the written statement. It was Civil Misc. Application No. 29182 of 2000 by which certain admissions made in the written statement were prayed to be deleted. The application was rejected on 6.12.2000.

8. We have heard learned counsel for the parties and respondents No. 5 in person.

9. Counsel for the petitioners argued that the Apex Bank and the Jalandhar Bank are two different entities and there is separate seniority for the cadre of Clerks both Senior and Junior in both the Banks. He also argued that there is no provision for recruitment by transfer in the Apex Bank. He also argued that the instructions could not be adopted by the Supervisory officer of the Apex Bank.

The Apex Bank is governed by the "Punjab Coop. Societies Rules" (hereinafter referred to as "the Rules") framed under the Punjab Cooperative Financing Institutions Service Rules, 1958. Rule 5(i)(b) as reproduced by the petitioner in para No. 10 of the writ petition is quoted below:-

"The recruitment to the service other than the Junior Clerks shall be made by promotion of persons already in service or by direct recruitment, provided that in the case of Senior Clerks posts 100% posts shall be filled by promotion."

10. In the rules, there is no provision for appointment of a Senior Clerk by transfer. Respondents No. 3 and 4 in their written statement have admitted that there is no provision for appointment in the cadre of Senior Clerk either by transfer or absorption. Respondent No. 2 has contended in reply to para No. 10 of the petition that it is admitted that the rules provide that 100% posts of Senior Clerks shall be filled in by promotion from Junior Clerics but as in the case of other cadres i.e. Junior Clerk/Junior Accountants, there is no power for transfer of an employee of any cadre from one bank to another bank. It is contended by respondent No. 2 that respondent No. 5 had also been a Senior Clerk after promotion on deputation and therefore, she cannot be treated as direct recruit to the post of Senior Clerk.

11. Respondent No. 5 has relied on the rules known as the Punjab State Cooperative Financing Institutions Employees Service (Conduct) Rules, 1998 (hereinafter referred to as "the Conduct Rules"). She has shown to us copy of the rules. In the said rules, the bank is defined as "BANK means the Punjab State Cooperative Bank Ltd. Chandigarh and includes the Central Co-operative Banks in the State of Punjab."

12. It may be noted that these rules are not relating to recruitment. The definition of the "Bank" in the Conduct rules will not serve any purpose. She has also argued that her name does not appear in the Annexure P/10 produced by the petitioner. Annexure P/10 is the statement showing the position of officials vis-a-vis respondent No. 5 as stated in paragraph 10 of the Replication. Annexure P/10 is just a list prepared by the petitioner and, therefore, the same cannot be treated as authenticated evidence and even if it is treated as such, the absence of the name of respondent No. 5 will not make any difference so far as the case of respondent No. 5 is concerned.

13. Respondent No. 5 has argued that it is the policy instructions by which she has been absorbed and it is not her fault and therefore, there is no reason to deny her the absorption in the Apex Bank. She has further argued that she is the member of the Union, however, she has been victimised by the Union. This argument has no relevance to the merits of the case. She has also argued that promotion is a matter of chance and she is claiming on promotion and not as a direct recruit and she became a candidate after the adoption of the policy. She has also argued that when she is not at fault, she should not be denied absorption and consequent seniority.

14. So far as the rules are concerned, it is clear that there is no rule for direct recruitment as Senior Clerk; recruitment of Senior Clerk by transfer from one department or by absorption. Absorption would itself be a transfer. Nothing has been shown by any of the respondents that there is some provision for transferring a person from one bank to another which is having separate cadres for the individual bank, so far as the Junior Clerks and Senior Clerks are concerned.

15. This takes us to the instructions. A part of the instructions, quoted above, deals with the exercise of option once in the service period to the District where husband/wife of the said employee is serving in Government or Private sector and further the seniority of the said employee who exercises his option will not be disturbed. It is clear that the instructions do not by themselves make any provision for transfer of an employee directly or by way of absorption in any other bank. These instructions were withdrawn subsequently. However, even if there are withdrawn, the question of their effect during the intervening period, could have been considered. However, when there is no provision for transfer/absorption shown, the instructions will not be of any help to respondents No. 1 and 5. Unless there is any basic provision for transfer/absorption, the question of exercising option and maintaining the seniority will not arise. They could have been applied (we do not express any opinion as it is not necessary) in case there was a provision for transfer/absorption and when this is not there, the instructions do not come to the rescue of respondents No. 1 and 5. It has been argued that some other provisions of the circular/instruction has been adopted by Hon'ble the Chief Justice of this Court, however, in view of the above reasons, we are not required to judge the applicability of these instructions to the present case.

16. In view of the above reasons, the impugned order of respondent No. 1 cannot be upheld.

17. We also make it clear that in this writ petition, there is no challenge to the validity of the circular/instructions and therefore, we do not discuss the same.

18. Consequent to the above discussion, we find that this writ petition deserves to be allowed. It is therefore, allowed and the impugned order dated 22.2.2000 Annexure P/S, is quashed.

19. Petition allowed.