
(2003) 02 AP CK 0092

In the Andhra Pradesh High Court

Case No : Writ Petition No. 370 of 1993

R. Venugopal

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 20-02-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 2

Citation : (2003) 6 ALD 70 : (2003) 3 ALT 518

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : P.B. Vijay Kumar, for the Appellant; K. Srinivasa Murthy, for the Respondent

Final Decision : Allowed

Judgement

Ghulam Mohammed, J.—This writ petition is filed seeking to issue a writ, more particularly one in the nature of writ of mandamus declaring the action of the respondent-State Bank of India, Local Head Office, Bank Street, Hyderabad, (for short, "the Bank") in disqualifying the petitioner for appointment to the post of Messenger on the ground of possessing higher educational qualification as discriminatory and violative of Article 14 and 16 of the Constitution and consequently direct the Bank to absorb the petitioner as Sub-staff in the Bank.

2. The case of the petitioner is that he worked as Messenger in the Bank for a period of 45 days on different days between 19-1-1987 to 31-12-1987 and a certificate to that effect was issued by the Branch Manager, State of Bank of India, Challagari, and also worked on different dates till 27-1-1989. It is stated that the Bank has issued a notification to fill-up the vacancies including the post of Messenger on permanent basis, and in response thereto the petitioner applied for the post of Messenger. It is further stated that the petitioner after unsuccessfully waiting to receive any communication in that behalf from the Bank, made enquiries and came to know that since he is a matriculate his case

was not considered. Aggrieved by the said restriction imposed by the Bank on possessing higher educational qualification, the present writ petition is filed.

3. In the counter affidavit filed by the respondent-Bank, it is stated that as the petitioner had passed 10th class prior to his temporary engagement in the Bank, inasmuch as the eligibility prescribed for the post of Messenger is non-matriculation, but a pass in 8th class, his case for selection to the said post was not considered and therefore no exception can be taken for not considering his case. It is further stated that the recruitment policy of the Bank is that candidates who have passed 10th class examination are not entitled to apply or be considered for the post of Messenger, that the petitioner was engaged purely on temporary basis for a period of 45 days and that by itself does not entitle him to any right, muchless under any express provision of law, to claim permanent absorption in the Bank as a matter of right. That in pursuance of the agreement entered with All India State Bank of India Staff Federation, u/s 2(p) of the Industrial Disputes Act, the Bank had agreed to give a chance for certain persons who had been engaged on a temporary basis for permanent absorption provided they fulfil the eligibility norms prescribed by the Bank for such permanent absorption. That the petitioner did not conform to the eligibility criteria prescribed in the notification, as such, he was not called for interview.

4. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-Bank.

5. Mr. P. B. Vijaya Kumar, learned counsel for the petitioner vehemently contends that inasmuch as the petitioner had passed 10th class prior to his initial engagement, he cannot be denied employment now on the ground of possessing higher educational qualification and such course of action on the part of the Bank is illegal, arbitrary and violative of Article 14, and 16 of the Constitution. It is also contended by the learned counsel that the restriction imposed by the Bank that candidates only who are non-matriculates, but a pass in 8th class, should alone are eligible to apply is not a sound condition of service, and such an imposition is ex-facie illegal and runs counter to the spirit and purport of the Constitution. In support of his contentions, learned counsel for the petitioner relied on the decisions of the Apex Court in H.D. Singh Vs. Reserve Bank of India and Others, , Y. Srinivasa Rao Vs. J. Veeraiah and Others, , & MOHD. RIAZUL USMAN GANI v. DISTRICT AND SESSIONS JUDGE, NAGPUR 2000 SCC 305. Learned counsel also relied on a Full Bench judgment of this Court in P.S. BHAGAVAN v. APSEB 1999 (4) ALT 357 (FB), and a Division Bench judgment in District Collector, Anantapur and others Vs. K. Sujatha, for the proposition that persons having a better qualification cannot be denied employment on the ground that they possess higher educational qualification than the minimum qualification prescribed.

6. Mr. K. Srinivasa Murthy, learned senior counsel appearing for the Bank contends that when the notification itself prescribes the minimum and maximum educational qualifications i.e. non-matriculation, but a pass in 8th class, as the

required qualification for appointment to the post of Messenger, the petitioner being a matriculate does not satisfy the prescribed qualifications and as such disqualified from being considered for the post, and therefore he was not called for interview. It is further contended by the learned counsel that it is within the domain of the rule making authorities to lay down the necessary qualifications, method of selection for recruitment and the category from which the recruitment to a service should be made, and that the classification of eligibility, in the instant case, is a class by itself and therefore does not amount to denial of equality of opportunity. That the action of the Bank in imposing such a restriction on higher educational qualification was intended only to give a chance to those class of persons who could not peruse their studies by reason of their economic conditions, and therefore the object was to uplift those category of persons who had not opportunity to compete for clerical posts and other analogous posts. In support of his contentions he relied on the decision of the Apex Court in KERALA SOLVENT EXTRACTIONS LTD. v. A. UNNIKRISHNAN 1994 (2) LLJ 888 and also on a Division Bench judgment of this Court in CH. PAPANNA v. THE PERSONNEL MANAGER, SBI 1996 (2) ALT 358 (DB).

7. The point that arise for adjudication is whether the action of the Bank in prescribing maximum qualification for certain posts, including the post of Messenger by the impugned notification offends Article 14 and 16 of the Constitution.

8. It is not in dispute that the petitioner had worked for 45 days as Messenger in the Bank and he is otherwise eligible for appointment for the said post, had he been a non-matriculate, with a pass in 8th class. It is also not in dispute that the petitioner is entitled to be considered for appointment as per the agreement reached between the Bank and the All India State Bank of India Staff Federation, irrespective of the fact that he had worked for only 45 days on different dates during the period between 19-1-1987 and 31-12-1987.

9. Hence, the only question that remains to be considered is whether possession of higher educational qualification is a disqualification. In the notification issued by the Bank the educational qualification prescribed for appointment for the post of Messenger is a pass in 8th class, but must be a non-matriculate. There cannot be any dispute and rather no one can contend that the Bank cannot prescribe a particular qualification as the minimum qualification, choose the mode of recruitment or the categories from which the recruitment should be made. But, as in the instant case, a policy decision was taken by the Bank that persons with minimum qualification of a pass in 8th class, and a maximum qualification of non-matriculation alone would be eligible for consideration. Whether such restriction of maximum qualification to only non-matriculantes is reasonable restriction and can be allowed to sustain on the touch stone of Article 16 of the Constitution, where equality of opportunity in matters of public employment is guaranteed, is the point to be answered. The Apex Court in H.D. Singh's case (1 supra) while considering an identical issue held thus:

".....It is really curious that the Stage has taken such an unreasonable stand. Person having a better qualification cannot be denied appointment on the ground that the minimum qualification required is something else. Prescription of a minimum qualification is necessary so that all candidates must hold atleast that qualification. But the same does not mean that a person with a higher qualification would not meet the requirement."

10. In Y. Srinivasa Rao's case (2 supra) while dealing the with a case of allotment of Fair-Price Shops, it was held thus:

".....that preference to an uneducated man over an educated man would amount to allowing premium of ignorance, incompetence and consequent inefficiency, and the same would amount to gross arbitrariness resulting in illegal discrimination."

11. In Mohd. Riazul Usman Gani's case (3 supra) the Apex Court held thus:

"A criterion which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification than prescribed cannot be rational. We have not been able to appreciate as to why those candidates who possessed qualifications equivalent to SSC examination could also not be considered. We are saying this on the facts of the case in hand and should not be understood as laying down a rule to universal application.

We do not think, therefore, that criterion as laid by the Advisory Committee constituted under the Rules and upheld by the High Court is in any way reasonable or rational. By adopting such a course the High Court has put its stamp of approval to another type of reservation for recruitment to the service which is not permissible. A poor person can certainly acquire qualification equivalent to SSC examination and not that he cannot go beyond Standard VII. Perhaps by restricting appointment to a candidate having studied only upto Standard VII the High Court may not be encouraging dropouts."

12. To the same effect are the judgments of this Court in P.S. Bhagavan's case (4 supra) and in District Collector, Ananthapur's case (5 supra). The decision in KERALA SOLVENT EXTRACTIONS's case (6 supra) relied on the by the learned Standing Counsel for the Bank was rendered on a different set of facts. In that case, one of the qualification for appointment as Badli workman was eighth standard, and the respondent-workman who was over qualified, obtained employment by suppressing the truth and under those circumstances, the Apex Court set aside the order directing re-instatement of the workman. In the present case, there is no violation of any law or suppression or misrepresentation of facts, at the most, there is a breach of terms of the notification inviting applications. The Bank has produced nothing to show that the classification made is reasonable or is based on a rational having a nexus to the object sought to be achieved, except stating that it is a policy decision taken by the Bank.

13. Though in the decision rendered by the Division Bench of this Court in Ch.

Papanna's case (7 supra) holding that rejection of the candidature on the ground of over-qualification cannot be said to be arbitrary or violative of Articles 14 and 16 of the Constitution and certainly a disqualification, in view of the judgment of the Apex Court in Y. Srinivasa Rao's case (2 supra) and also in view of the Full Bench judgment of this Court in P.S. Bhagavan's case (4 supra) and the subsequent Division Bench judgment in District Collector, Ananthapur's case (5 supra), the writ petition is liable to be allowed.

14. On the above analysis, I am of the considered view that the action of the respondent-Bank in restricting the persons with qualifications higher than non-matriculation from applying to the post of Messenger is illegal and arbitrary and violative of Articles 14 and 16 of the Constitution.

15. In the result, the writ petition is allowed and the respondent-Bank is directed to consider the case of the petitioner for appointment to the post of Messenger, and pass necessary orders thereon within a period of four weeks from the date of receipt of a copy of this order. Costs quantified at Rs.1,000/-.