**(2016) 10 P&H CK 0002**

**In the Punjab And Haryana At Chandigarh**

**Case No :** CWP No. 14565 of 1996 (O&M)

Ravinder Singh APPELLANT

Vs

Haryana State Cooperative Land Development Bank Ltd. RESPONDENT

**Date of Decision :** 18-10-2016

**Acts Referred:**

Constitution of India, 1950 — Article 14, Article 16
Haryana State Cooperative Land Development Bank General Conditions Relating to Staff Service Rules — Rule 9.2(e)

**Citation :** (2017) 3 SCT 266

**Hon'ble Judges :** Rajiv Narain Raina, J.

**Bench :** Single Bench

**Advocate :** Rajesh Lamba, Advocate, for the Petitioner; R.S. Chahar, Advocate, for the Respondent No. 1; H.S. Gill, Sr. Advocate with R.K. Dhiman, Advocate, for the Respondents No. 2

**Final Decision :** Disposed Off

## Judgement

Rajiv Narain Raina, J. (Oral)—Today, Mr. Chahar appearing for the Bank-1st respondent has produced an order dated October 7, 2016 appointing the petitioner as a Manager in the Haryana State Cooperative Agriculture and Rural Development Bank Ltd. Though the order has been passed and communicated to the petitioner but Mr. Lamba says that the petitioner has not been made to join the post so far. The order is retained on record as Mark ''A''.

2. Though appointment has been offered but it has been treated as a fresh appointment and to this extent Mr. Lamba submits that the petitioner has a grievance. If the petitioner joins without protest, he will lose his right to some of the service benefits which might be available to him by reason of having approached this Court in 1996 challenging the selection and appointment of the private respondent. In the present petition, in order to press his rights to secure an appointment as against the terribly weak rights of the private respondent, who is no doubt a product of nepotism being the son of a sitting Director of the

Bank namely Sher Singh Yadav, the petitioner claims antecedent rights at par with the private respondent since he is retained in service, especially when Rule 9.2 (e) of the Bank Rules totally prohibited the appointment.

3. Mr. Lamba submits that he may not be compelled to initiate fresh proceedings to claim benefits that might be available to him including retrospective seniority, pay at par with the private respondent, promotions, if any, that fell in the way and earned by the private respondent during the interregnum, including claim to pension and terminal benefits by treating the period of service notionally from the date when the private respondent was appointed. These are non-pecuniary benefits which the petitioner would be eminently entitled to as a result of declaration of his rights not by the Court but by the Bank itself in the process of consideration of his case in the light of two interim orders passed by this Court, which have led to the offer of appointment. The first interim order was passed on July 25, 2016 and reads as follows:-

"In order to balance out the equities between the case of Sanjay Yadav, who apparently was appointed contrary to the prohibition contained in Rule 9.2(e) of the General Conditions Relating to Staff Service Rules that a Director''s son cannot be appointed in the respondent-Bank and the case of petitioning Ravinder Singh, who both were placed in the waiting list and had secured equal number of marks i.e. 22, therefore the Bank has to be put to notice. Besides, there is a third candidate, who has also secured 22 marks. Neither any tie-breaking rule has been shown to Court nor was a conscious decision taken after the Bank was confronted with a situation where three persons had secured equal marks, thereby prescribing a tie-breaker rule by compulsion and to enforce it uniformly, fairly and honestly. It is not disputed that Sanjay Yadav was the son of the sitting Director of the Bank, namely, Sher Singh Yadav and Rule 9.2(e) prohibited his appointment. As against an illegal appointment offered to Sanjay Yadav the claim of the petitioner has been ignored in what appears to be product of illegality and nepotism. This passing over the right of consideration of the petitioner is despite the fact that Sanjay Yadav had approached this Court in CWP No.6484 of 1996 challenging the selection complaining that another selected candidate was also the son of the Director of the Bank relying on Rule 9.2(e) itself.

Strange argument it was to make when two negatives do not always make a positive. The petition was dismissed in default of appearance and was conveniently not revived thereafter and even after nullification of the entire selection, candidates returned to hold office as Managers. There is no gainsaying that the selection process has been upheld in judgment produced by Mr. Gill, learned Senior counsel appearing for R-2 in CWP No.8763 of 2002 (Satyapal v. State of Haryana & ors.) and connected cases decided on 8.8.2012 upheld in LPA No.1839 of 2013 wherein the appeals filed by the respondent-Bank against the order of the learned single judge were dismissed on several grounds including grounds of delay and laches vide order dated 14.11.2013. Photocopies of the judgments are retained on record.

 

As said before, in order to balance out the competing interests by an equitable dispensation the Bank will take a decision whether it is prepared to offer appointment to the petitioner or suffer prospect of nullification of the appointment of Sanjay Yadav despite passage of time, an issue which was not considered and decided in the litigation (supra). Accordingly, learned counsel for the Bank to obtain instructions and place them on record in writing regarding the views of the respondent Bank.

List again on 1.8.2016."

This order was backed up by a second interim order dated August 1, 2016, which reads as follows:-

"Learned counsel appearing for the petitioner has produced letter dated 30.07.2016 signed by the Managing Director. In the letter, Managing Director has explained that he is not the competent authority to take a decision with reference to the order dated 25.07.2016 passed by this Court. He informs that it is the Board of Directors which is the competent authority for appointment of Manager as per Staff Service Rules of the Bank.

Accordingly, the order dated 25.07.2016 will be put up in the meeting of the Board of Directors and the decision shall be informed to this Court. It is a lengthy process and requires adjournment of the case for a minimum of two months. The request made by Managing Director and voiced by Mr. U.K. Agnihotri, Advocate is accepted.

Case is adjourned for two months to enable the respondents to produce the decision of the Board of Directors. The said letter is taken on record as mark ''A''. The decision of the Board of Directors be placed on the record of this case three days in advance to the date fixed with a copy to the opposite counsel.

List again on 18.10.2016."

It is in the light of these interim orders that the Bank has relented and taken stock of the situation and offered appointment to the petitioner after two decades vide order dated September 16, 2016. It may be noted that the office order dated September 16, 2016 has been followed by another office order dated October 7, 2016, referred to above, and the office order dated October 7, 2016 mentioned in the application of the petitioner dated September 29, 2016, which was the joining report. Mr. Lamba has passed on a copy of the same and it reveals that he only sought permission to join the Bank but it surrenders none of his rights or gives them up even by necessary implication.

3. The office order dated October 7, 2016 records the decision unanimously taken by the Board of Directors resolving as under:-

"The BOD took note of observation of Hon''ble Punjab & Haryana High Court''s orders dated 1.8.2016 passed in CWP No.14565 of 1996(O&M). After detailed deliberations, it was unanimously resolved that Sh. Ravinder Singh S/o Sh.

Baldev Singh R/o Village Bhodia Khera, Tehsil & District Fatehbad be given offer for fresh appointment of Manager in the Bank subject to the condition that he will not claim benefit of seniority/promotion from the retrospective effect.

M.D. was authorised to do the needful in this regard."

The appointment is not only a fresh one but the resolution precludes the petitioner from claiming benefit of seniority and promotion from the retrospective date. Is this a fair thing to do? There are two options before the Court. One is to proceed to hear the respective counsel and take a decision on seniority, promotion etc. or opine on the appointment of the private respondent in the context of Rule 9 of the Rules. The other is to leave the petitioner litigating afresh on these denials. Instead of fanning multifarious litigation in the near future, where legal principles already evolved by Court are known tools in the dispensation of justice then I have heard learned counsel for the parties on the expansion of the case to accommodate the claims arising out of the appointment now offered by the Bank and after these issues have been contested by the Bank today in the light of the supervening events.

4. I am of opinion that it would be a travesty of justice not to put the petitioner in the shoes of Sanjay Yadav for all intents and purposes when the latter is being retained in service other than back salary. Since the appointment of Yadav was per se illegal and to save him the Bank has had to relent to an offer of appointment to the petitioner as a measure of face saving. Failing which the private respondent''s appointment could easily be declared illegal and void ab initio being the son of the then Director of the Bank when he procured appointment for his son contrary to the statutory prohibition. I should, therefore, think that it would serve the ends of justice if the petitioner is held dis entitled to pecuniary benefits prior to joining but all the same entitled to other service benefits as a result of the present proceedings culminating in the appointment. It would not be fair to compel the petitioner to approach this Court again against the resolution of the Board of Directors granting partial relief to him and denying the rest without any rhyme or reason. The petitioner has made a general prayer in the petition for grant of reliefs by way of any other appropriate writ, order or direction deemed fit and proper in the circumstances of the case may also be issued to him. The main prayer was for setting aside the appointment of the 2nd respondent and to offer appointment to the petitioner against the resultant vacancy.

5. Mr. R.S. Chahar and Mr. H.S. Gill, learned senior counsel for the respondents state on the pointed query from the Court whether there was a vacancy in 1996 other than the one occupied by the 2nd respondent and their answer was in the affirmative. Therefore, even a supernumerary post need not be created by a Court direction dating back to the appointment of the 2nd respondent for the petitioner to claim these rights. Mr. Lamba has cited my judgment in CWP No.15272 of 2012, Surinder Kumar v. Union of India & ors., decided on November 6, 2013 to claim past benefits. I had observed in that case as under:-

 

"The case of the petitioner be now considered against an available vacancy or by deducting one post from future selection or by creating a supernumerary post to accommodate the just and fair claim of the petitioner, though the petitioner would not be given the relief of back wages for the period prior to appointment. Such denial to my mind may be somewhat unfair but it is a price a litigant pays willy nilly based on judicially accepted practise forming a part of the judge made law and for good and sufficient reason flowing from the application of the principles of ''no work-no pay'' when the issue presented before the Court is debatable, not clear cut but is determined for the first time in judicial review of administrative action calling upon the State as an employer to depart from prescribed formats to serve the ends of justice in exercise of equitable jurisdiction based on interpretative processes and reasoning applied by courts in a set of given facts presented to it for determination on accepted legal principles or newly evolved. If the denial of right to appointment lacks bona fides and is a deliberate attempt to forestall employment on selection then I am inclined to think it may be open to this Court to order payment of back salary as well to an aggrieved person manifestly deprived of his right to work and earn wages through direct recruitment just as in cases of palpable and wrongful denial of promotion in the face of juniors promoted without just cause or legal justification or in cases of proper denial to start with but rights crystalizing following complete exoneration from charges of misconduct laid on unreasonably delayed conclusion of inquiries and on opening of sealed covers where such procedure was followed then and where back salary may become payable or actionable as explained in Union of India v. K.V. Jankiraman, AIR 1991 SC 2010 as an exception to the normal rule of refusal to pay arrears of back wages on notional promotion from back date. This issue is, however, left open vis-a-vis direct appointment to be considered in some other case. Be that as it may, let the fresh exercise as ordered above be now done by the respondents within 45 days of the date of receipt of a certified copy of this order."

A direction has already been given in the interim order that the appointment of respondent No.2 was a product of illegality and nepotism and in the face of that interim finding, appointment has been offered to the petitioner which I would take as an acceptance of the fact. However, in the special facts of the case the appointment of the 2nd respondent will not be disturbed by passage of time as it may be inequitable. The petitioner has got his main relief re: appointment to service as a Manager in the Bank. He would not get arrears of salary prior to the date of appointment/joining. Nevertheless, he is held entitled to seniority from retrospective date when the 2nd respondent was appointed, including pay at par with the 2nd respondent by giving increments notionally and all other incidents of service notionally from the past and actually from the date of appointment.

6. The decision of the Board of Directors denying seniority/promotion from the back date is set aside being an unconscionable term imposed for no fault of the petitioner when he was high on merit to have secured an appointment if the 2nd respondent gained illegal access to employment, which actually deserved to be

 

quashed. The respondent Bank has done no favour to the petitioner in shielding the 2nd respondent till the last moment. This is the only way to make amends, howsoever drastic they might seem or appear. Justice cannot be rationed, said famously, Judge Learned Hand.

7. Accordingly, the petition is disposed of as above.

 