(2014) 09 GUJ CK 0022

In the Gujarat High Court

Case No : Special Civil Application No. 17686 of 2013

Roli Nigam APPELLANT

Vs

State Bank of India (SBI) RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2014) 09 GUJ CK 0022

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : B.R. Gupta and Vivek B. Gupta Advocates, Advocate for the Appellant; M.S. Dharmishta Raval, Advocate for the Respondent

Judgement

Abhilasha Kumari, J.—Rule. Ms. Dharmishta Raval, learned advocate waives service of notice of Rule for the respondent. On the facts and in the circumstances of the case and with the consent of learned counsel for the respective parties, the petition is being heard and decided finally.

2. The challenge in this petition preferred under Article 226 of the Constitution of India, is to the order dated 26.08.2013, passed by the respondent-State Bank of India, informing the petitioner that as she has secured less than 50% marks in the re-test for confirmation, as a Probationary Officer, her services cannot be confirmed and stand terminated.

3. Briefly stated, the facts of the case are that the petitioner applied for appointment as a Probationary Officer in the respondent-Bank pursuant to a Public advertisement published by the Bank on 30.01.2010. Vide letter dated 24.02.2011, the petitioner was informed that the Central Recruitment and Promotion Department of the Bank had selected her for appointment as a Probationary Officer and she had been allotted to the Ahmedabad Circle. The petitioner was asked to report to the Assistant General Manager (Administration) in the Bhavnagar Administrative Office of the Bank. An appointment order as Probationary Officer was issued to the petitioner on 24.02.2011. It was stipulated

in the said order that the petitioner would be on probation for a period of two years from the date of appointment. Her confirmation in the respondent-Bank would be subject to:

(a) satisfactory reports from the sources of the Bank as well as from District Police Authorities regarding character and antecedents,

(b) satisfactory completion of in-service training during probation and

(c) satisfactory performance in the evaluation/confirmation tests to be conducted by the bank during the probation period.

3.1. It was further stipulated in the appointment order that unsatisfactory performance in the evaluation/confirmation tests would be dealt with as per the guidelines/instructions of the Bank in force at the time, pertaining to conducting evaluation/confirmation tests. The petitioner was further informed by the said order that her services would be governed by the SBI Officers'' Service Rules, 1992, as well as instructions/guidelines as amended from time to time, a copy of which would be provided to her on joining the Bank.

3.2. Accordingly, the petitioner joined the respondent-Bank as Probationary Officer. She underwent a confirmation test on 9th December, 2012. Vide communication dated 15-2-2013, the petitioner was informed that as she had scored only 97 marks out of 200 in the said test, which was less than the minimum passing score of 50%, she was not found suitable for confirmation as an Officer in the services of the respondent Bank. By the said communication the petitioner was further informed that a decision has been taken to extend her probationary period for a further period of six months and to give her another chance to appear in the confirmation test, which would be held within the said period of six months. The petitioner was further informed that she would have to score a minimum of 50% marks in order to be considered for confirmation, on the completion of the extended period of probation. It was specifically stated in the said letter that if the petitioner fails to score 50% marks in the re-test, the Bank would be constrained to terminate her services without any further notice, in terms of the appointment letter dated 24-02-2011. The letter contained a further stipulation to the effect that the petitioner should take the forthcoming test seriously and arrange to equip herself with knowledge of her work that was required to rectify the deficiencies. The mark sheet of the petitioner was also reproduced in the said communication.

4. It is the case of the petitioner that from 12-2-2013 to 12-8-2013 (six months), the petitioner was on sanctioned maternity leave and, therefore, could not attend to her work. The re-test took place on 14-7-2013. According to the petitioner, that she was not keeping well during her maternity leave and was advised complete bed rest. It is the case of the petitioner that the Bank could have rescheduled the examination, as there is a provision for doing so in the Rules, but did not do so. The petitioner was "forced and coerced" into appearing for the re-test on 14.07.2013, though she was in no position to do so. According

to the petitioner, she was denied reasonable opportunity to appear in the re-test. The petitioner has produced medical certificates dated 15.07.2013 and 20.09.2013, annexed as Annexures-E and F to the petition. The petitioner appeared for the confirmation re-test on 14.07.2013. Thereafter, vide the impugned communication dated 26.08.2013, of the respondent-Bank, the petitioner was informed that as she had scored 96.5 marks out of 200, which was less than 50% marks, the minimum qualifying marks required to pass the test, her services had been terminated. The petitioner was informed that one month''s emoluments would be paid to her in lieu of one months'' notice. The petitioner made a representation dated 31.08.2013, requesting for one more opportunity to appear in the examination. The request was rejected on 6th September, 2013. Aggrieved by the termination of her services by the respondent-Bank, the petitioner has approached this Court by way of the present petition.

5. Mr. B.R. Gupta, learned advocate for the petitioner, has submitted that the petitioner was on maternity leave when the re-test was scheduled by the respondent-Bank. She was not keeping well, as can be seen from the medical certificates annexed as Annexures-E and F to the petition, and was in no position to appear for the re-test. The petitioner had requested the respondent-Bank to re-schedule the examination but this aspect was not acceded to by the respondent. That the Bank could have extended the probation period of the petitioner for a further period of six months and given her another opportunity to appear in the test, as permitted by the Rules, but this was not done in the case of the petitioner. The petitioner was suffering from post-operative complications and could not prepare herself as she could not attend the training. It is further submitted that during her service as a Probationary Officer, she discharged her duties efficiently and diligently and the Branch Manager of the respondent-Bank has certified her services as being excellent.

5.1. Learned advocate for the petitioner has further submitted that now the petitioner is over-age and would not be in a position to apply for employment under a government or semi-government agency. The termination of the services of the petitioner by the respondent-Bank has ruined her career in the banking sector. That, this action of the respondent-Bank is arbitrary, discriminatory and illegal, apart from being violative of the fundamental rights of the petitioner under Articles 14 and 16 of the Constitution of India. It is, therefore, prayed that the impugned order terminating the services of the petitioner, be quashed and set aside.

6. No other grounds have been urged, by the learned advocate for the petitioner.

7. The petition has been strongly resisted by Ms. Dharmishta Rawal, learned advocate appearing for the respondent-bank.

7.1. It is submitted on behalf of the Bank that the petitioner was very well aware from the moment of her appointment that after the probationary period of two years, she would have to undergo a confirmation test in which she was required to score at least 50% marks. It is only upon passing the confirmation test that the services of the petitioner could have been confirmed. It is submitted that the petitioner had been put to notice by way of the appointment order itself, that her confirmation would be conditional upon the petitioner''s evaluation/confirmation tests to be conducted by the Bank during the probation period and unsatisfactory performance in the evaluation/confirmation tests would be dealt with as per the instructions/guidelines of the Bank in force at the relevant point of time. That the petitioner took the first confirmation test on 9-12-2012, that is before she went on maternity leave on 12-2-2013. The petitioner failed to score 50% marks as she obtained 97 marks out of 200. As the petitioner did not pass the confirmation test in the first attempt, a decision was taken to give her a second chance and she was informed accordingly, by letter dated 15-2-2013. In the said letter it was clearly stated that the probation period of the petitioner has been extended by a further period of six months and a confirmation re-test would be held within six months, in which she would have to score a minimum of 50% marks in order to be confirmed as an Officer in the services of the Bank, failing which her services would be terminated without further notice. It is submitted that the petitioner failed to secure 50% marks, therefore, the Bank has terminated her services as per the Rules/instructions in force. The action of the Bank is, therefore, neither illegal nor arbitrary.

7.2. It is further submitted that the re-test was held on 14-7-2013, and the petitioner took the said test. The medical certificates produced by the petitioner are dated 15-7-2013 and 20-9-2013, and have been obtained after the re-test. The petitioner has made a representation only on 31-8-2013, after her services were terminated on 26-8-2013. She has made no other representation asking for re-scheduling of the confirmation re-test as submitted by the learned advocate for the petitioner, and none has been produced on record. That the Bank has acted as per its policy in terminating the services of the petitioner, who was very well aware that she was required to pass the confirmation test. The petitioner has failed to do so in two attempts. The Bank has applied the same policy to its Probationary Officers all over India and the petitioner is no exception. That the petitioner appeared in the confirmation re-test of her own volition and it is incorrect to say that she was either forced or coerced by the Bank to do so. Having failed to pass the confirmation test in two attempts, the petitioner could not be granted a third opportunity as per the prevalent procedure and policy of the Bank.

7.3. It is submitted that the petitioner has been dealt with in accordance with the prescribed procedure and guidelines of the Bank, therefore, the petition be rejected.

8. This Court has heard learned counsel for the respective parties, perused the averments made in the petition and the documents annexed thereto.

9. It is an admitted position that the appointment of the petitioner as

Probationary Officer was subject to certain conditions contained in the appointment order dated 24-2-2011, one of which was the requirement of passing the confirmation test after a probationary period of two years. If the petitioner would have passed the confirmation test with the requisite 50% marks, her services in the Bank would have been confirmed. The said test was held on 9-12-2012. The petitioner scored 97 marks out of 200, which was less than 50%; therefore, she was informed by a letter dated 15-2-2013, that she was not found suitable for confirmation as an Officer in the Junior Management Grade Scale I and her probationary period was extended for six months. The petitioner was further informed that she could appear in the confirmation re-test which would be held within a period of six months. It may be noted that the first confirmation test was held on 9-12-2012, when the petitioner had not proceeded on maternity leave. The performance of the petitioner in the said test and her score of 97 out of 200 marks (less than the required 50%) cannot, therefore, be linked to her health or maternity leave. It is not the case of the petitioner that she was not in a position to take training or prepare herself for the initial confirmation test. The performance of the petitioner in the said test reflects her own ability and the respondent-Bank, cannot be blamed if she scores less than 50%. As per the guidelines of the Bank at the relevant point of time, which are encapsulated in a Circular dated 09.06.2011, appended to the Further Affidavit filed by the Bank, the probation period of a Probationary Officer who fails in the confirmation test would be extended for a further period of six months and such candidate would be granted an opportunity to write the second test to be conducted within six months of the first test. The Bank has followed these guidelines in the case of the petitioner. The appointment order of the petitioner clearly mentions that her services would be governed by the State Bank of India Officers'' Service Rules, 1992 (the Rules), as amended from time to time and the instructions/guidelines/other rules and regulations framed by the Bank from time to time. Rule 15(3) has a proviso that states that the competent authority may, in the case of any officer, reduce or dispense with the period of probation. Rule 16(2) provides that if, in the opinion of the Competent Authority, an officer has not satisfactorily completed the training or not passed the test or if the service of an officer is not satisfactory, the officer''s probation may be extended by a further period not exceeding one year. The said rules vest discretion in the Competent Authority to reduce or extend the probationary period of an officer. Pursuant thereto, the Bank has issued the Circular dated 09.06.2011, which lays down a uniform policy according to which such cases would be governed. This circular was in force when the petitioner wrote the confirmation test and the re-test, and the said guidelines have been applied to her as well as to all other Probationary Officers of the Bank. The Bank has adopted a uniform policy that, if a Probationary Officer fails to pass the confirmation test his/her probation period would be extended for six months and such officer would be granted an opportunity to write the second confirmation re-test within six months. The Officer would have to score 50% marks, failing which the services of such officer would be terminated. The case of the petitioner cannot be treated as an exception, when the policy is being uniformly applied by the Bank to all such cases. Merely because the petitioner proceeded on maternity leave before the second re-test, it cannot be said that the Bank should adopt a different policy for her by granting her a third chance.

10. The petitioner took the second confirmation test on 14.07.2013, after she proceeded on maternity leave on 12.02.2013. It is not mentioned in the petition when the delivery of the petitioner took place. However, there is a Certificate dated 15.07.2013, on record, issued by Dr. Nidhi Jain, Gynaecologist on the letter head of Vijaya Maternity and Surgical Nursing Home, which states that the petitioner underwent a caesarean section in the month of March at the said hospital, after which she had bleeding problems and was advised complete rest for one month from 1st July, 2013. The petitioner has produced a second medical certificate dated 20.09.2013, issued by the same Doctor, stating that the petitioner was advised complete bed rest for six months after the pregnancy and was facing a bleeding problem and abdominal pain in the month of July, 2013, for which she was advised to refrain from physical activity or mental stress. Both these certificates have clearly been issued after petitioner had already appeared for the second confirmation test. There is no document or representation of the petitioner on record indicating that she was unable to appear in the second test for medical reasons and requesting that the test be rescheduled. If the petitioner had faced the problems as indicated in the certificates and was not in a position to write the second test, it is strange why she did not communicate this to the Bank before the said test, but only produced the Certificates later, after she had been unsuccessful in obtaining the requisite 50% marks in the second test. Though the Court does not intend to cast any aspersions on the Doctor who has issued the Medical Certificates, it is noticed that in the first certificate dated 15.07.2013, it is stated that the petitioner was advised complete bed rest for one month from 1st July, 2013, whereas in the Certificate dated 20.09.2013, it is stated that the petitioner was advised complete bed rest for six months after her pregnancy. The Certificates appear to have been produced as an afterthought, in an attempt to explain the unsatisfactory performance of the petitioner in the second test. Had the petitioner been facing medical problems before the second test, it would have been but natural for her to have informed the Bank prior thereto and not later. The petitioner has not produced any document to this effect. Further the assertion of the petitioner that she was certified as having rendered excellent services by the Branch Manager under whom she served is also not supported by any material on record. The submissions advanced by the learned advocate for the petitioner, in this regard, are therefore, unconvincing.

11. It has been submitted on behalf of the petitioner that she was "forced" and "coerced" into appearing for the second confirmation test. There is nothing on record to support this contention. It was in the interest of the petitioner''s service to appear in the confirmation test, and she did so of her own accord. It is, indeed, unfortunate that the petitioner scored 96.5 marks out of 200 in the second test, closely missing the required score of 50%. One can understand the

heart-burning that the petitioner may have felt by narrowly missing the required score of 50% in both the tests. At the same time, there can be no compromise on merit and efficiency merely on the ground of sympathy. The petitioner failed in both the confirmation tests and her services were terminated as per the policy of the Bank as was clearly stated in the letter of the Bank dated 15.02.2013. The petitioner was very well aware of the consequences of not passing the second confirmation test, even before it was held. The petitioner has to take the responsibility for her own unsatisfactory performance, whatever be the reason for it, and cannot blame it on the Bank. Under the circumstances, the action of the Bank in terminating the services of the petitioner, after she failed to pass two confirmation tests, cannot be said to be illegal, arbitrary or discriminatory.

12. For the aforestated reasons, this Court finds no merit in the petition.

13. The petition stands rejected. Rule is discharged. There shall be no orders as to costs.