

(2010) 11 KAR CK 0130

In the Karnataka High Court

Case No : Writ Petition No"s. 16048 to 16052 of 2010

R.T. Basavaraj and Others

APPELLANT

Vs

Pragathi Gramin Bank and Another

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 3 KarLJ 233

Hon'ble Judges : V. Jagannaathn, J

Bench : Single Bench

Advocate : S. Prakash Shetty, for the Appellant; D.L.N. Rao for T.P. Muthanna, for the Respondent

Final Decision : Dismissed

Judgement

1. Though these petitions are listed in preliminary hearing "B" Group, with the consent of the learned Counsel for the parties, they are disposed of finally.

2. The Petitioners were among several candidates who were eligible for taking up the written test to be conducted for the post of Officer, Scale I from Clerk-cum-Cashier post. R1-Pragathi Gramina Bank into which Chitradurga Gramina Bank came to be amalgamated, issued a notification dated 18-2-2010 (Annexure-A) intimating the eligible candidates about the date of written test and the venue. As per the said notification, the Petitioners, being the employees working at the Chitradurga Gramina Bank were to take the examination at S.J.M. Institute of Technology, NH-4 Bypass, Chitradurga, and in all 229 candidates were to take the written test at the said centre.

3. It is the case of the Petitioners that they, along with 200 other clerks-cum-Cashiers presented themselves at the SJM Institute of Technology to take up the written examination and they were present at the said centre at around 1.00 p.m. However, as there was some dispute between some persons who were also the candidates for the post on one side with Shri Panneer Selvam, General

Manager of R1-Bank, on account of verbal exchange between the parties, the examination could not be conducted at the said centre and though the written test was to commence at 2.00 p.m., on account of the situation that prevailed at the centre, the room invigilators had to return the test booklets and answer sheets marking absence of the candidates in the attendance sheet because, the written test could not be conducted on account of the situation created by a Group of six persons, who were found shouting slogans against Panneer Selvam, General Manager, and there was also a total blockade of the entry for candidates to the examination room. The written test, therefore, could not be conducted as per Schedule at the aforesaid SJM Institute of Technology centre.

4. The Petitioners have, therefore, sought direction from this Court to R1 to conduct the examination for the post of Officer, Scale-I from Clerk-cum-Cashier post in respect of Chitradurga, Davanagere and Shimoga Districts, and yet another direction sought was to direct R1-Bank not to promote any persons to the cadre of Officer, Scale I till re-examination is conducted as the Petitioners could not take part in the written test held on 7-3-2010 for the reasons above mentioned.

5. Learned Counsel Sri Prakash Shetty for the Petitioners, referring to the charge-sheet issued to one Shivakumar as per Annexure-D, contended that a perusal of the contents of the charge-sheet would go to show that only six persons including Shivakumar mentioned in the charge-sheet were the persons who had raised slogans against the General Manager and it was these six persons who had also prevented the other candidates from entering the examination room and, as such, if the written test was cancelled, it was not on account of any fault on the part of the Petitioners but rather it was on account of the act of the persons whose names are mentioned in the charge-sheet. It is, therefore, contended that, by denying the Petitioners opportunity of taking the written test for the post of Officer, Scale I, the Petitioners have lost their right to be considered along with the candidates who have been already selected pursuant to the examination held at two other centres, viz., centre at Bellary and the centre at Kolar. Hence, the learned Counsel for the Petitioners, relying on the contents of the charge-sheet, argued that the Petitioners cannot be deprived of their right to take part in the written test and although the written test could not be conducted because of certain unpleasant events that took place on account of the acts of six persons, the Petitioners, therefore, be permitted to write the written test once again and they also be considered for promotion if found eligible after the test, along with the candidates who have already been successful in the written test conducted at the other centres.

6. Another submission made by the Petitioners' Counsel is that, though the examinations are held periodically for the post of Officer, Scale I and the Petitioners though are eligible to take the written test during the ensuing period, yet, even if the Petitioners become successful in the written test to be held once in every year, still they would become juniors to those who were successful in the

written test held on 7-3-2010 and for this reason also, the prayer sought by the Petitioners be granted.

7. On the other hand, learned Senior Counsel Sri D.L.N. Rao for the Respondents argued that the Petitioners have made allegations against one Panneer Selvam, General Manager of R1-Bank, and referring to the averments made in paragraphs 6, 7 and 8 of the writ petition, it is contended that the writ petition itself is not maintainable without making the said Panneer Selvam as a party to the writ proceedings and, therefore, all those allegations that are made in the aforementioned paragraphs cannot be considered. In the same context, it is also submitted that as the allegations made are in the realm of disputed questions of fact, this Court, in writ jurisdiction, therefore, cannot go into those aspects of the matter and, as such, the writ petition has to be dismissed for this reason also.

8. The next limb of argument of the learned Senior Counsel for the Respondents is that, though 229 candidates were to take the examination at the S.J.M. Institute of Technology centre, only five candidates have come up before this Court and the rest of the candidates are in no way aggrieved by the cancellation of the written test to be held at the SJM centre on 7-3-2010. It also means that the Petitioners as well as the other candidates also toed the line of the agitating group and refrained from taking part in the written test because, even though the Petitioners contend in the writ petition that they had been to the examination hall between 1.20 and 1.30 p.m., nothing prevented the Petitioners as well as the other candidates to take part in the written test.

9. Yet another submission made by the learned Senior Counsel for the Respondents is that, in respect of the test conducted on 7-3-2010 at various centres, the selection process has been completed and 52 candidates have been selected for the post of officer, Scale I and the said persons have taken charge and have been functioning in the said post of officer, Scale I for over six months. Therefore, it is also a good reason for not entertaining the plea of the Petitioners for conducting re-examination for the Petitioners.

10. On the above grounds, the learned Senior Counsel for the Respondents sought for dismissal of the writ petition as not maintainable and he also referred to the statement of objections filed in this connection. One other point canvassed on behalf of the Respondents is that, the entire examination is conducted as per the directions of the Institute of Banking Personnel Selection (IBPS) and several technicalities are involved in conducting the examination and that the whole examination process is controlled by c processing of answer sheets. Therefore, even for the technical reasons, the writ petition cannot be entertained.

11. In the light of the aforesaid submissions made by the learned Counsel for the parties, the point for consideration is whether the Petitioners have made out a case for grant of relief as sought for by them.

12. The first and foremost factor to be taken note of is that, in the writ petition, the Petitioners have stated that there was a heated exchange of words between

Panneer Selvam, General Manager of R1-Bank, on one side and six persons on the other and, in view of the said atmosphere prevailing, Panneer Selvam gave instructions to the invigilators not to allow the candidates to appear for the examination. It is also averred in the writ petition that Panneer Selvam had instructed the staff not to allow anybody to the examination hall. Thus, a plain perusal of the averments made in the writ petition gives an indication that the Petitioners also found fault with Panneer Selvam. However, the said Panneer Selvam has not been arraigned as a party in these writ petitions and, as such, without his presence as a party to these proceedings, this Court cannot go into the matter of the allegations levelled against the said Panneer Selvam by the Petitioners and moreover, those allegations fall into the sphere of disputed questions of fact which requires investigation.

13. The next aspect is, though the name of one Shivakumar and five other persons' names are mentioned in the charge-sheet (Annexure-D), the fact remains that, out of 229 candidates who were to take the examination at the SJM Centre, only a handful of them have come up before this Court airing their grievances over cancellation of the test. Therefore, the submission made by the learned Senior Counsel for the Respondents that the agitators, though were numbering six, were also backed up by several candidates in preventing the test to be held, cannot be lightly dismissed as having no substance in it.

14. The next aspect to be taken note of is that the candidates who took the examination at the two other centres, A and C, had a smooth sailing insofar as the conduct of written test is concerned and among the successful candidates, the Respondent -Bank has also filled up 52 posts and the said promotees are functioning in the said promotional post of Officer Scale I for nearly six months. As such, if the Petitioners' prayer is now granted by permitting them to take the examination once again, it would only lead to opening of the Pandora's box in the sense, the candidates, who are already selected and functioning in Officer Scale-I grade, would also be at the risk of their seniority being unsettled if the Petitioners are permitted to take the examination once again pursuant to the notification dated 29-1-2010.

15. Last but not the least is the entire averments in the writ petition require investigation into facts and, as such, this Court cannot embark upon such an exercise in its writ jurisdiction. That apart, the examination having been conducted as per the guidelines issued by IBPS (as per Annexure-R1), several technicalities are also involved and this Court also cannot go into the technicalities aspect in these proceedings.

16. No doubt, some of the candidates who, according to the Petitioners' Counsel, are innocent, are also deprived of taking the written examination on 7-3-2010. Whether that one circumstance alone could be a factor to tilt the scale in favour of the Petitioners is the question. In this regard, it would be useful to take note of the observations made by the Apex. Court in two cases.

17. The first one is in the case of Madhyamic Shiksha Mandal, M.P. Vs. Abhilash Shiksha Prasar Samiti and Others, . That was a case where the examination was cancelled on the report of the Tahsildar, who had visited the centre and found the students copying with impunity even before distribution of the question papers. There was also valuers' report showing that there was mass copying. The High Court interfered with the decision of the Mandal which had cancelled the examination. The Apex Court found no justification in the High Court interfering with the decision taken by the Board to treat the examination as cancelled and in the course of its judgment, the Apex. Court made the following observations:

It is unfortunate that the student community resorts to such methods to succeed in examinations and then some of them come forward to contend that innocent students become victims of such misbehaviour of their companions. That cannot be helped. In such a situation the Board is left with no alternative but to cancel the examination. It is extremely difficult for the Board to identify the innocent students from those indulging in malpractices. One may feel sorry for the innocent students but one has to appreciate the situation in which the Board was placed and the alternatives that were available to it so far as this examination was concerned. It had no alternative but to cancel the results and we think, in the circumstances, they were justified in doing so. This should serve as a lesson to the students that such malpractices will not help them succeed in the examination and they may have to go through the drill once again. We also think that those in charge of the examinations should also take action against their Supervisors/Invigilators, etc., who either permit such activity or become silent spectators thereto. If they feel insecure because of the strong arm tactics of those who indulge in malpractices, the remedy is to secure the services of the Uniformed Personnel, if need be, and ensure that students do not indulge in such malpractices.

18. In the case of Chairman, J and K State Board of Education Vs. Feyaz Ahmed Malik and Others, the Apex Court was once again seized with the case of cancellation of examination on account of mass copying and whether in such matters, interference under Article 226 of the Constitution is called for or not was considered and the Apex Court, in that connection, made the following observations:

While judging the authority or otherwise all steps taken by authorities of the Board to take action against candidates taking resort to mass malpractice it should be borne in mind that the Board is entrusted with the duty of maintaining higher standards of education and proper conduct of examinations. It is an expert body consisting of persons coming from different walks of life who are engaged in or interested in the field of education and have wide experience. The decision of such an expert body should be given due weightage by Courts. In matters concerning campus discipline of educational institutions and conduct of examinations the duty is primarily vested in the authorities incharge of the institutions. In such matters the Court should try not to substitute its own views

in place of the authorities concerned nor thrust its views on them. That is not to say that the Court cannot at all interfere with decisions of the authorities in such matters. The Court has undoubtedly the power to intervene to correct any error in complying with the provisions of the rules, regulations or notifications and to remedy any manifest injustice being perpetrated on the candidates. The approach of the High Court in taking upon itself the task of finding out a scheme to tackle the problem of mass malpractice in examination was erroneous and this vitiated the judgment.

19. If the aforesaid observations of the Apex. Court are also applied to the case on hand, no doubt, it is unfortunate that some innocent candidates also suffered because of the acts of several persons but, that itself cannot be a ground to interfere with the decision taken by the Respondent -Bank.

20. Another aspect is that, it is not disputed by the Petitioners' Counsel that among the successful candidates who took the examination in the other two centers, R1-Bank has already promoted 52 persons by filling up the vacancies that were there when the notification was issued on 29-1-2010. The Petitioners have only sought for a direction to R1 not to promote any person to the cadre of officer, Scale I from Chitradurga, Davanagere and Shimoga Districts. The said prayer has now become infructuous following R1 having already promoted 52 candidates from among the successful candidates who took the written examination on 7-3-2010. As the promotion already given to 52 candidates has not been challenged, the writ petition, therefore, becomes infructuous even for this reason also. In this regard, reference can be made to the Apex Court observations in the case of *Piare Lal v. Union of India and Ors.*, wherein it has been held that the original petition becomes infructuous by reason of the subsequent orders.

21. For the aforesaid reasons, the writ petitions lack merit and are accordingly dismissed.