

(2023) 07 PAT CK 0047

In the Patna High Court

Case No : Letters Patent Appeal No. 613, 1258 Of 2019 In Civil Writ Jurisdiction
Case No. 7154 Of 2019

Santosh Sarkar

APPELLANT

Vs

Central Bank Of India

RESPONDENT

Date of Decision : 21-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2023) 07 PAT CK 0047

Hon'ble Judges : K. Vinod Chandran, CJ; Partha Sarthy, J

Bench : Division Bench

Advocate : Prashant Sinha, Ajay Kumar Sinha, Dilkash Khan

Final Decision : Dismissed

Judgement

1. The appeals are filed by the Bank and the petitioners in the writ petition against the order of the learned Single Judge. The writ petition was filed for a direction to appoint the petitioners to the post of Safai Karmchari-cum-Sub-Staff on the basis of the selection conducted by the Bank. It was alleged that the selection process was done based on a settlement entered into between the management of the Bank and the association of employees, wherein temporary/casual workers employed in the subordinate cadre, including Safai Karmcharis who have put in a minimum of 45 days service during the continuous period of twelve months would be allowed to participate in the recruitment process. The prayer for appointment was declined on the reasoning that the Bank had not appointed the persons since there were no vacancies, against which the petitioners have filed the appeals.
2. The Bank, in their appeal is aggrieved with the portion of the judgment which directed the Bank to ensure that whenever a fresh recruitment process is initiated, the petitioners' case would be considered.
3. The learned counsel for the petitioners Shri Prashant Sinha pointed out that

the High Court of Bombay at Nagpur had allowed similar prayers made before it. It is pointed out that the petitioners were engaged as Safai Karmcharis on a temporary basis and their right arose under the Memorandum of Settlement entered into between the management and the unions. The petitioners herein are persons who were daily wage employees in the various Branches in the Region of Motihari. The selection within Motihari was carried out, but later the same was cancelled despite the petitioners being called for the interview. Learned counsel for the petitioners pointed out that the judgment referred to by the learned Single Judge in C.W.J.C. Nos. 19254 of 2014 and 16666 of 2014, which was reversed in L.P.A. Nos.460 of 2016 and 449 of 2016, was not of similarly placed persons. Therein, the selection was from the open market and the Bank had refused to carry out the appointments on similar ground of surplus staff being engaged. The petitioners therein had approached the Hon'ble Supreme Court in which the present petitioners had sought for intervention. While declining the prayer for intervention, it was directed that the cases of the casual workers would be considered in accordance with law, unfettered by the decision in the S.L.P. In such circumstances, especially following the judgments of the High Court of Bombay and Gauhati, learned counsel prays for allowing the appeal after setting aside the judgment of the learned Single Judge.

4. Learned counsel for the respondent Bank submits that the settlement portion was completely misread. It is stated that the measure employed was a one time measure and it was specifically indicated that it would not be applicable for future selections. In fact, it is argued that there is no condition of an appointment to be made and the prescription is only insofar as a participation in the selection process. Insofar as the Motihari region is concerned, a selection process was initiated. Subsequently, surplusage was found of the staff already in employment which resulted in the appointments not being made. It is argued that the trite principle is that there is no vested right on a candidate participating in a selection process, for appointment to any post.

5. We have looked into the judgment of the High Court of Bombay which allowed the prayer despite a delay of five months having occurred in approaching the Court. Immediately we have to notice that in the present case the selection is said to have been initiated in 2013 and cancellation was in 2014 whereas the petitioners approached this Court in 2019 with the present writ petition.

6. We also looked at the specific settlement arrived at between the management and the union of employees. The joint decision taken was that, in the recruitment contemplated of subordinate staff, the temporary/casual workers employed in the subordinate cadre in the various branches of the Bank would be allowed to participate in the recruitment process along with the fresh candidates. The said condition is as below:

"WHEREAS after a serious of discussions, it has since been agreed by and between the Management and All India Central Bank Employees' Federation (AICBEF) (Recognized Majority Union for Award Staff) that as a onetime measure

such temporary/casual workers so engaged by various branches within the guidelines of Central Office Management will be allowed to participate in the Recruitment Processes which will be initiated in the immediate future (but not in the subsequent process, if any) for selection to the post of sub-ordinate staff within the designation 'Safai Karmachri-cum-sub-staff' and/or 'Sub-staff, on Full Time basis (as per the eligibility criteria) along with fresh candidates, subject to fulfilling all the following conditions:"

7. The specific condition, as per the option, was permission to participate in the recruitment process which would be initiated in the immediate future and it has been specified that there will not be any consideration in the subsequent processes. Hence, the petitioners' contentions fail insofar as their having challenged the cancellation of recruitment after five years.

8. Yet again, the conditions, for availing the benefit of the above extract, is that an appellant should have put in minimum 45 days work, during a continuous period of 12 months and the age of the candidates should have been between 18 to 26 years when they were engaged as temporary/casual workers. It is also stated that the candidate should produce satisfactory proof acceptable to the Bank in support of the claim of having worked for a minimum period of 45 days in a continuous period of 12 months. In this context, we have looked at the certificates produced by the three petitioners as Annexure-1. The 1st petitioner is said to have worked from 06.06.2012 till the date of issuance of the certificate, which is seen from the letter as dated 25.04.2016. Insofar as the 2nd petitioner is concerned, the certificate of 25.04.2013 only shows that he was working as a casual worker for the last two years and there is no certificate as to whether he was working for 45 days in a given year. The certificate of the 3rd petitioner dated 26.02.2013 also speaks of his having worked between 2011 and 2013 for 150 days.

9. We cannot but notice that the certificate produced by the 1st petitioner is far after the selection was cancelled. The call letter issued by the Bank, produced as Annexure-2 of the 1st petitioner is seen to be on 04.02.2013 at which point he could not have been working for a continuous period of 12 months in the Bank since, even according to the certificate, he had been engaged only beginning from 06.06.2012. The certificates issued in favour of the others are also seen to be issued after the issuance of the admit card, which is evident from Annexure-2 issued to the 1st petitioner. In this context, we have to notice that the petitioners in paragraph-4 have stated that they were temporary/casual workers engaged in the various branches of the Central Bank of India within the Motihari Region for more than ten years and they had been working for a period of 45 days in a continuous period of 12 months. The statement is belied by the fact that the 1st petitioner is 29 years as on the date of filing of the writ petition and in 2012 he would have been only 22 years. Likewise, the 2nd petitioner is 25 years in 2019 and he would have been only 18 years in the year 2012. The 3rd petitioner was 33 years when the writ petition was filed and he would have been 26 years in

2012. If the petitioners' assertion that they were working for 10 years is believed, then they would have been engaged when they were minors.

10. We do not think that the petitioners have a valid contention to be agitated before the Court. We, hence, dismiss L.P.A. No.613 of 2019.

11. Insofar as L.P.A. No.1258 of 2019, we cannot but notice that the direction of the learned Single Judge to consider the petitioners, whenever a fresh recruitment process is initiated, is made beyond the prescription in the memorandum of settlement. The memorandum of settlement only enables participation of the temporary/casual workers engaged for more than 45 days in a year in the selection process to be initiated in the immediate future and not in the subsequent processes. There can be no such direction at this stage after more than a decade from the settlement entered into.

12. We have also found that the petitioners individually have not proved their eligibility to even participate in the selection process. The mere fact that they were allowed to participate, does not really matter since there is nothing in the admit card to show that the participation was only on the basis of their temporary or casual work. It is the admitted case of the appellants that the selection was conducted both from the open market and the casual workers.

13. The prescription in the agreement is also only for participation in the selection initiated in the immediate future; which would necessarily include the candidates from the open market; without which there would be a violation of Articles-14 and 16 of the Constitution of India. We do not think that the judgment of the Guwahati High Court or the Bombay High Court would enable the petitioners for a similar order, especially in the context of the delay in approaching the Court and also the suspicion cast on their eligibility, to claim that they were persons who were entitled to participate on account of being engaged as Temporary/Casual Workers in the various branches of the Bank. The appeal of the Bank stands allowed setting aside the provision for future consideration of the petitioners.

14. Ordered accordingly.